

MAY 31, 2005

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May 31, 2005 LB 90, 90A, 312, 312A, 645
 LR 237

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain of the day is Sister Veronica Volkmer from the Marian Sisters in Waverly, a guest of Senator Foley. Sister, please.

VERONICA VOLKMER: (Prayer offered.)

SENATOR CUDABACK: Thank you, Sister Veronica, for being with us this morning. We appreciate it. Sister Veronica is from the 29th District. I call the eighty-seventh day of the Ninety-Ninth Legislature, First Session, to order. Senators, please record your presence. Record please, Mr. Clerk.

ASSISTANT CLERK: There is a quorum present, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Any corrections for the Journal?

ASSISTANT CLERK: No corrections this morning.

SENATOR CUDABACK: Messages, reports, or announcements?

ASSISTANT CLERK: Mr. President, I do. LB 312, LB 312A, LB 90, and LB 90A were delivered to the Governor on May 25, have been signed and delivered to the Secretary of State. I have a confirmation report from the Education Committee regarding Tim Hodges to the Coordinating Commission for Postsecondary Education. New resolution, LR 237 by Senator Raikes; that will be laid over. (Legislative Journal pages 1813-1814.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to the first agenda item, General File 2005, committee first priority bills. Mr. Clerk, LB 645.

ASSISTANT CLERK: Mr. President, LB 645 introduced by the Speaker. (Read title.) The bill was read for the first time on January 19, referred to the Transportation and Telecommunications Committee. That committee reported the bill to General File with committee amendments. Those amendments

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have been considered by the body previously. At that time, AM1334 by Senator Brashear and others was adopted. Now under consideration is an amendment to the committee amendment from Senator Chambers, FA210. (Legislative Journal page 1811.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Brashear, would you like to give us a quick summary review of what the bill contains, please?

SENATOR BRASHEAR: Thank you, Mr. President. Good morning, members of the body. To summarize briefly, LB 645, as amended, enacts a prohibition on all public entities from providing telecommunications services. It preserves the ability of all public entities to use telecommunications services for internal use related to their public purpose. It enacts a prohibition on public entities other than public power suppliers from providing telecommunications services on a wholesale basis. It enacts a moratorium on public power suppliers from providing telecommunications services on a wholesale basis, only until December 31, 2007. And it creates a task force to study the deployment of broadband over power line and other technologies, and those members are representative, to the best of my knowledge, of the various people who would have an interest in this legislation; permits for a professional facilitator of the task force; and requires a report to the Legislature, in order that it can exercise its continuing jurisdiction, and the report would be due December 1, 2006. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Baker, Transportation Committee, would you like to give us a summary on the committee amendments, please?

SENATOR BAKER: Thank you, Mr. President and members. Very briefly, yes, LB 645 came out of the Transportation Committee. It was designated the committee's first priority bill, and the amendment we adopted, I believe last Thursday, AM1334, now becomes the bill. And with that, I don't know that I can add too much more to what Senator Brashear said. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. Senator Chambers, would you like to tell the body what is contained in your

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amendment to the committee amendment, please?

SENATOR CHAMBERS: Just very briefly, Mr. President, this is one of those issues that has been discussed through some of my amendments, and this one simply says "Strike section 5." But so that the body or at least that portion who might be interested will be aware of what this is, it relates to a prohibition against certain public entities getting involved in the kind of telecommunications activity that the bill relates to. This is an amendment that I'm very serious about, and I think, Mr. President, that explains what the amendment is. Thank you.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard descriptions of what is contained in the amendments, and the bill, and the committee amendment. (Visitors introduced.) On with discussion of LB 645. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature. I'm sure a portion of what Senator Brashear would like to do here should be done, but the broadness of this bill is just mind-boggling. And I want to get into some of the areas here and inquire with Senator Brashear again, for some additional information. Brashear...

SENATOR CUDABACK: Senator Brashear, would you yield to a question?

SENATOR BRASHEAR: Yes, Mr. President, I will yield.

SENATOR BEUTLER: Senator, I was not aware of and have now become aware of the sections of statute, part of which you are repealing, and it's called County Telephone Systems. And it provides for a mechanism by which a county can have an election, and a county can levy a tax, and basically a county can have its own telephone system. And this set of statutes apparently has been used for a large number of years, in terms of being a form of leverage, or at least a backup kind of set of provisions that could be used, if a county ever thought its service was so bad that they wanted to have a public telephone system. Sounds odd to us now. This set of statutes, to my knowledge, has never been used. If this kind of public prerogative can be in statute

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for so long and never be used, why does the telecommunication industry consider it a threat, and why do they want to get rid of it? It seems to me that this particular provision of statute parallels what we do with gas companies, that we set in place, to some extent, the idea that public entities in unusual circumstances, emergency circumstances or circumstances where the private provider is just doing a lousy job or perhaps has no competition or whatever, we've allowed for unusual procedures whereby the public entity can, in fact, run its own system. And we've apparently done this for telephone systems, either, and I wasn't even aware of that. Why, if this alternative has existed for almost 90...more than 90 years now, what's wrong with keeping that in place, just as a form of leverage? Why do you want to get rid of it, Senator Brashear?

SENATOR BRASHEAR: Well, Senator Beutler, you are correct. It's been there a long time. I think it's 1913 or something like that. You are also correct, it's never been used. For whatever it's worth, the counties no longer care to have the option, and, of course, it does conflict with the concept that we are going to have a standstill and a study as to how we will balance, as a matter of public policy...

SENATOR CUDABACK: One minute.

SENATOR BRASHEAR: ...the new technologies and the implementation of the new technologies between public and private entities, particularly where we have public entities doing some things and private entities having made capital investments and doing others.

SENATOR BEUTLER: Okay, thank you, Senator Brashear. Senator Cudaback, I...did you say one minute?

SENATOR CUDABACK: I did, Senator.

SENATOR BEUTLER: So I need to end. But I just point this out as a section that's being repealed, and as a section that follows the model we followed in some other areas, of at least allowing the public entities the alternative, in unusual circumstances, of going to a public system. We have that in our

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gas statutes, we apparently have it in our telephone statutes, and it's a mechanism that I think we should think about, in terms of...

SENATOR CUDABACK: Time, Senator Beutler.

SENATOR BEUTLER: ...why do we want to take it away altogether. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. On with discussion of the Chambers amendment. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I've done a lot of thinking about this bill over the weekend. I don't like it. I think it creates an unequal set of circumstances. And I've thought about the way we've been dealing with it on the floor. Just a handful of us, minus two fingers, have been discussing this bill and the problems that it creates. I had said I would not be the one to force it to go to cloture, and that's exactly what I mean. There are heavyweights on both sides of this bill. I was shocked when I was told how many millions of dollars have been spent on lobbyists lobbying this bill. Such being the case, it shouldn't be necessary for me to say anything about it, one way or the other. But when something is a matter of public concern, and I think the interests of the public at large are being negatively impacted, I'm going to say something, even though nobody may hear it, although I'm sure my words will have no impact on anybody, relative to the votes they will cast for or against this bill. I'm going to vote against it. There is only one form this bill could take which would cause me to vote for it, and that's if it contained only the provisions relative to a study. By declaring that the privately owned, investor-owned enterprises are going to have carte blanche to gouge the public, to grant services where they want to, withhold them where they please, charge whatever whimsy may lead them to charge, when a bill does that, it is a bad bill. If we were talking in moral terms, I would say it is an evil bill. The public interest is not being served by this bill, but the interests of the profit makers. If I were in a business to make profit, I want to spend as little as possible, while reaping as large a return on my expenditure as

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possible. If like Qwest--Q-w-e-s-t, that is, for the sake of the transcribers--I can avoid paying income tax, I would. If I could avoid any expenditure or outlay of cash, that is precisely what I would do, because I want the income to be as high as possible, and the outgo to be as little or as small as possible. My amendment which is before us, which strikes Section 5--and this is the section whose subsection 2 declares that a public power supplier shall not provide on any basis broadband services, Internet services, telecommunications services, or video services, that means--and it's not likely to happen--if every telecommunications company for some reason went out of business, those services could not be provided by any public entity. We need to look...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...at what the language of the law declares, what could happen under that law, and what is prohibited. To have a potential or capability in the hands of a public entity, which capability could benefit the public, it is not wise to say that for the period that this bill sets out, that public entity or those public entities cannot engage in the kind of activity which would be beneficial to the public. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) On with discussion of the Chambers amendment. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, it's late in the session and hard to get information, but I've been trying to get information on what other states are doing. It's interesting that in Colorado, their recent legislation, Senate Bill 05152, is part of what they're doing on the same subject. As I mentioned earlier, apparently the telecommunications industry and other industries are making a move nationally on this, to try to contain public involvement, and in the Colorado bill, they do limit local governments with respect to providing cable television and telecommunications service, and what they call advance service, which is high-speed Internet access. Those are the areas that they deal with,

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somewhat narrower than what we're dealing with. And they provide these limitations, but then it says, except as provided in this article. Then it goes on to outline some conditions where public local government may provide services. It provides generally that they can do it after a vote in a referendum, and the ballot is put to the people. That's kind of similar to the way we do it with gas, and apparently with telephones, too. Then in addition to that, another area that they talk about, where they treat it differently than this bill does, it says, the local government shall be exempt from the requirements and may engage or offer to engage in providing cable television service--and this is exempt from the referendum, apparently--in situations where no private provider or cable television service, telecommunications service, or advance service provides the service anywhere within the boundaries of the local government. So if they have an area where they have no service, they allow the local...the public entity to jump in, or the governing body of the local government has submitted a written request to provide the service to any incumbent provider of these different types of services, and the incumbent provider has not agreed within 60 days of the receipt of the request to provide the service, or if they had agreed, has not commenced providing the service within 14 months of the receipt of the request. So in Colorado, and I understand in Texas, and I suspect in most places if we could get ahold of the statutes, they're not putting through their Legislature a bill that's nearly as broad as the one we have here, or nearly as prohibitive in all situations, as this bill is. And nor do they distinguish between retail and wholesale, at least in this Colorado bill, for example. So this bill we have in front of us is very, very large. It includes, as you know, Internet services, which are not currently regulated at all, and some other forms of services that are not currently regulated at all, either; video services, for example. So I'm hoping that before you let this bill go through you will prune it down and logically, I would think,...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...make sure that none of these prohibitions are lasting in this broad form, up until the study is done. And

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then based on the study, which will differentiate, we hope, and allow us to make a more sophisticated distinction as among these various services that are regulated and unregulated, and which have differing degrees of emerging technologies, it all makes sense to have the study. And it all makes sense to make the laws after we've done the study, not to make the laws before we've done the study. And as you will recall in this bill, there is an ongoing and lasting prohibition against retail services that is independent of the study, and it deals with wholesale services by prohibiting them to public entities up until the time of the study.

SENATOR CUDABACK: Time, Senator Beutler. Thank you, Senator Beutler. Senator Landis, on the Chambers amendment.

SENATOR LANDIS: Senator Cudaback, members of the Legislature, I had just decided to sit here and vote no on the bill, but Senator Chambers, I think, was saying--well, that's apparently where he was going to come out, roughly, in this same situation--public entities have a role to play in providing low-cost, appropriate services. There are places where public entities have gone that private entities would not go in our history. And the reason is, there was no profit for the private entities to go there, and it required the public entities to get to distant and remote places. Our rural colleagues, more than anyone else, should understand the role that the public sector plays in providing a web of services, border to border. Without public entities, rural electric cooperatives, the like, we would not have electricity. We would not have some of the other basic services, because of the absence of the profit motive to be able to justify the investment for the return that's there. I'm not prepared to subtract the public sector from the telephone industry, I'm not prepared to subtract them from the Internet, from the web, from the use of their existing assets. Some form of regulation, fair enough. But I must say that I'm very wary of drawing that line. My first approach is, in fact, to say no until I see demonstrated a balanced approach, which I do not see at the moment, nor do I think is likely to come in that warfare between the public sector and the private sector, under general conditions. I didn't want to interrupt the debate. I'm not all that conversant in this particular area. But my predilections

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and my philosophy is such that I do not hold some kind of a bias against the public sector provision of essential services. And today, Internet services, electricity, television--TV, telephone, those are all basic services, and the public sector, I think, has a fair and reasonable role to play in that, and I'm not prepared to curtail that at the current time. I'm voting no on LB 645.

SENATOR CUDABACK: Thank you, Senator Landis. (Visitors introduced.) On with discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Beutler has a couple of amendments which are designed to ameliorate some of the harm done by this bill in its present form. I do appreciate the comments that Senator Landis made, and I don't know that it is necessary for anybody to go into highly technical terms or deeply technical discussion, because this bill is not about that. If a person has no understanding whatsoever of the types of services that are being covered by this bill, such person nevertheless could justifiably join in the discussion, and take the approach similar to what Senator Landis did, that public entities should not be frozen out entirely and absolutely from this activity. I'm not opposed to the study. I think the study could proceed just as well without the ban on these public entities. This will give the gougers, the graspers, the would-be monopolists a clear field. If there's an area that they choose not to serve, that area will not be served, because they're the only game in town. How many of you would like to have a similar set of circumstances, whatever you're doing? I saw in the most recent legislative publication where Senator Fischer was tagging the ear of a calf. Now if she were the only person raising cattle in Nebraska, there are a lot of things she does now that she wouldn't have to do. She wouldn't have to brand an animal, she wouldn't have to build fences, or do anything else, because she is the only one doing that work, engaged in that type of enterprise. But she is not the only one. General Motors is not the only one selling automobiles. Ethanol is not the only fuel additive. Amoco is not the only company that can be identified as being associated with big oil. But when it comes to the telecommunications industry in Nebraska, the only entities which may be able to

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provide some degree of competitiveness that will at least make these giants, these hogs, these gougers, think twice, and glance over their shoulder every now and then, is to be wiped out. And wiped out by the Legislature. You all are the representatives of the people, of the public. How much of those millions, other than what was spent to feed you that bad food, did any of you all realize? Any of you got fat pockets because of all the money spent lobbying this bill? You got spurs that jingle, jangle, jingle, but how about your pockets? You got anything jingling, jangling in there, as a result of all the money spent on this bill? When I finish talking on this amendment, I'm going to withdraw the rest of mine, because they are of a similar stripe, which is to take away certain sections from the bill. But this one, I'm not going to withdraw. I want to get a vote on this particular provision. I do not believe that these public entities...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...should be absolutely frozen out. What business does the Legislature have taking such a position? How in the world are these big shot industry representatives and practitioners in the industry going to be harmed within two years, if these public entities explore the possibility of providing these services? What do they call it, BPL? Or something--whatever it is. These abbreviations always give me a pain. Members, I hope you will pay attention to the amendment that I have and vote with me to strike Section 5 from the bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion. Senator Janssen, followed by Senators Connealy, Brashear, Loudon, and Schimek. Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. In listening to the debate, and I heard the remark was made that if there were no competition in some of the rural areas, that they could raise the rates as high as they wanted to, and as Senator Chambers always says, "gouge the public." But it seems to me that we do have a department or a commission intact, the Public Service Commission, that all of the providers

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have to go through them, if they want any rate increases. That's been in place for quite a few years now, and they are there so that the gouging does not happen throughout the state. Now if that does happen and you feel as though the PSC is letting this happen in some areas, there are recourses that you can come in and argue your case before them, that you think that is too excessive. Yeah, I...I'm not sure that I want to see this portion of the statutes eliminated. That does have a concern of mine, but I believe that...I believe that the basic thought in this whole legislation is good. I hate to see someone who is tax-exempt come in and compete with companies that aren't tax-exempt, also. So we have to look at both sides of this, and which I'm doing. I believe that Senator Chambers and Senator Beutler are arguing a good case, and...but I also believe that Senator Brashear, who has brought this bill to us, is on the right track. I hate to see the competition, to those who pay taxes and those that don't. It's the same thing we argued on LB 500. One company is keeping taxes, and the other one isn't. So that's an...that's not a level playing field, also. So we do have cases that--not only in communications, but in business itself--where the playing field is not level. But I want to protect the public, I want to see, too, that this whole state has adequate communication service, which, speaking with Senator Loudon last week, I asked Senator Loudon if there were...if he had a problem getting access to any kind of communications that he wanted out there. He said, no, it's available. We can get what we need. Now whether the cost is the same as it would be in the eastern part of the state, I...I would suspect it should be. It certainly should be, if...but there again, if you feel that it isn't fair, you do have a place you can go to. You do have the Public Service Commission that regulates these rates. With that, thank you for the time.

SENATOR CUDABACK: Thank you, Senator Janssen. On with discussion of the Chambers amendment. Senator Connealy, followed by Senator Brashear.

SENATOR CONNEALY: Thank you, Mr. President, members. I thought maybe I would reiterate what I've...my position on the bill. I believe that we need a retail ban, and I think we need the study. I just think that the bill overreaches. It goes farther

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than we need to do at this point, and I think that a lot of that has been covered this morning. The point that Senator Beutler brought up about, you know, repealing a section of law that hasn't been used, I think is also more than we need to do. We ought to be studying this, we ought to stop public entities from retailing, but beyond that, I don't think we should. So I just thought I'd make sure people remembered from back last week where I am on it. We had an amendment that wasn't successful. I've got a couple more that...down below. We are going too far with this bill, even though I believe that we do need a retail ban.

SENATOR CUDABACK: Thank you, Senator Connealy. Senator Brashear.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. And therein lies the rub. Senator Connealy, who is opposed to the bill, believes the bill goes too far, but he supports the retail ban. It has been that kind of effort all the way through. There is a ban on retail. Those who would be banned from retail are supportive of the ban and are willing, as a part of the total accommodation, for getting the study, which will be an informative effort that will come back to this Legislature with its substance. Everybody wants to do that. We're trying to figure a way. And the reason why Colorado and Texas and other entities aren't particularly helpful is because we are the state in the United States of America that has public power. We have said we want public power. We want power provided by nonprofit entities. We are a different horse of a different color. And when you boil the bill down, so you have a retail ban that even some of the opponents are speaking in favor of, you have a moratorium on wholesale--I'll come back to that--and a study done by as broad a group as we can put together--maybe we could make it broader, but I'm willing to talk with anybody on the composition of the group--but we have a broad-based study, professionally facilitated, to help us get the information so we can talk about how we ought to be moving into the technology era in a sensible way. And the reason I ask your permission to come back to why we need the moratorium is because, in whatever area you work, you have the experience. People who have the money, make an investment in capital

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expenditures. People who don't have, don't make the money. People who are uncertain about the future are hesitant. So what we're trying to do with the moratorium is produce, not something evil, not thwarting progress, but a level playing field and a standstill, so we don't have a situation where somebody, either way, where a public entity spends the public's money to try and get a strategic advantage, or where a private entity won't spend the money it earns, within the total scheme of the marketplace, to progress technology. Those are competitive things. People have to be certain, before they invest money, that they can get a return on their investment. If they don't, then you have situations like we see playing out at the national level, where the public ends up picking up pension funds. I don't quite understand that one. But all the while...all the people who are responsible are getting paid. We're trying to do an orderly thing here. Retail ban that doesn't seem to be upsetting anybody, a moratorium, a thorough study, get a report back to the Legislature, let the Legislature speak as a matter of public policy about how we will move into an era where technology is going to be--I'm reminded of, "It's the economy, stupid." Well, maybe the next version of that sign is going to be, "It's technology, stupid," or "It's China, stupid." But we have to get information, basic information. We're standing here without the basic information, as to the how and why and wherefore and by whom. We should approach technology...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...in this state, which is unique among all the states, and therefore must approach the question uniquely--we alone are totally dedicated to public power. So I rise against, respectfully, against the amendment, urge the adoption of the Transportation Committee amendment, and thank you for your attention.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Louden, followed by Senator Schimek, on the Chambers amendment.

SENATOR LOUDEN: Thank you, Mr. President, and members of the body. Since I probably live as far from the central out at the ranch as anybody else here--perhaps Senator Fischer might--but

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we're over 40 miles from the central. Now where we are we don't get DSL; there's no such thing as DSL. In fact, on our phone system we don't even get caller ID, because we're too far from central. So consequently, if you want Internet service, why, we have to go satellite, and that runs about \$70 a month, plus the cost of the equipment, to put it in. When we come down here to Lincoln, why, we can get DSL, put it on our one phone line, so we don't have to have two lines, and goes from there, and the cost is, I don't know, \$16, \$17, whatever the price of it is. But nonetheless, when we first started out there with Internet service, we had, had a dial-up out of Alliance. The dial-up service that was done in Alliance was--it wasn't a public power district, but it was a Panhandle electric co-op that put it in. It was an electric cooperative that put it in. In order to get the dial-up, we had to put our own phone lines in. The phone company at that time, whether they were still part of the Bell system or the Qwest system, but they were plumb paranoid when it come to putting underground lines in. They would cost about 4,000 bucks to probably put in a quarter of a mile of line, but they would give me all the wire I wanted if I'd put the line in myself. So we dug the line in ourselves, hired a trencher and put the line in ourselves, and they gave us an eight-wire line. So I have an eight-wire line going into the ranch. I can have all kinds of service into the ranch, if I could get it past the box that's sitting over there, 40 miles from Alliance. This is the way it works out, out in the hinterland, as you want to call it, because they do not put service out there if there aren't enough people. So consequently, this is where public power districts, where some of them come along to service those types of areas that no one else wants to. When we got ready to put in a satellite Internet service, I looked around and ended up with public power service in eastern Nebraska, is the one that gave us...is who we buy our Internet service through. Whether they're doing it legally or illegally, I don't know, but they're the only game in town when it come to putting it out there in our area. Sure, after they start getting some people out there, then there are other ones that are wanting to come out there now, and are willing to take that service over. But to be on the cutting edge and bring the power and the services to us to start with, it wasn't your IOUs or your investor-owned utilities. It was your public service utilities that usually

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coughed up the money and went ahead to service the customers they already had, that was in the long, long distance between residents. Right now there's LB 722 that was introduced as a study. So my question is, is why are we even talking about LB 645, if we want to do a study and bring this forward in the future? I would like to see the study. I think this is something that needs to be done. I think that part is all right, but I don't see why we should put a moratorium on any of the retail or wholesale. My observation is, this is something that's mostly going to be done in a metropolitan area. I have some idea on what this BPL is all about. It's something that we've had for probably 50 years. We've used it on our ranch. As long as you're inside your transformer, you could use these intercom services, as long as you're on the inside of the transformer, and my understanding is it works the same way. The problem is, is you can never figure out a way to get past the transformer or a substation, and I think this is something that only in a metropolitan area, where the residencies are hundreds by the block, that this is something that will be of interesting.

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: If this is the case, then why don't we set it up so that only in a metropolitan area is that...perhaps this bill would be effective. I would like to see a study done on it, but I can't really...I don't believe I will support LB 645. I think there are better ways to do it than what we're coming up with at the present time. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. Senator Schimek, followed by Senator Beutler, on the Chambers amendment.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I've been engaged in this discussion, and I'm not even quite sure what I'm going to do about voting for the bill, although, Senator Chambers, I'm tempted to vote for your amendment. But I guess what I wanted to do--the reason I turned my light on--was to respond to something that Senator Chambers did say a bit ago, about money jingle-jangling in people's pockets. And, Senator Chambers, I don't mind if you chide us for lunches and that kind

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of thing, but I think that we should be pretty proud of the fact that in Nebraska, we haven't had any legislative scandals, so to speak, like they've had in other states, like Florida, like South Carolina, like Wisconsin, for heaven's sakes. Tennessee, California. They've all had very major legislative scandals, people on the take, people in the Legislature voting a certain way and accepting money for voting that certain way. So I wanted to say that I think that we should take a great deal of pride in the fact that we have a very clean system in Nebraska. That isn't to say that that couldn't change at any time and that we shouldn't be wary. But we do have in place accountability and disclosure reporting laws, which are available to the public, and we do have conflict of interest laws, which also are incumbent upon us to use, when necessary. If we were a full-time Legislature, it probably wouldn't be as much of a gray area. But because we have people in this Legislature that come from all occupations and all walks of life, they are here representing not only themselves, but perhaps the industry or the occupation that they're in. It is very difficult, I think, in this Legislature, to get away from the fact that if you're a farmer, that there might not be some interest from you on voting on a particular bill, or an attorney, or somebody who works for the healthcare industry, or whatever. The most important thing, I think, is to be aware of what conflicts are, and to declare those conflicts of interest when they occur, and then let people decide. If you decide not to vote and you have a conflict of interest, presumably you could argue that some of your constituency isn't being represented, and your district is not getting a vote. And I think that's the way...that's why we've written the conflict of interest laws the way we have. You can declare your conflict of interest, but you can still vote. Now if you have a direct financial benefit from that, then I think that there ought to be some thought given to whether you really should vote or not. But having said all that, I just wanted to say, Senator Chambers, that I'm proud of this, the Legislature and the process we have in Nebraska. Can it be improved? Probably. Do we always need to be wary? Yes. But I didn't want to leave the impression out there with the public that we're a bunch...

SENATOR CUDABACK: One minute.

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SENATOR SCHIMEK: ...of crooks in here. So, thank you.

SENATOR CUDABACK: Senator Beutler, on the Chambers amendment. Is Senator Beutler on the floor? Senator Beutler, you're recognized. Did you waive? Thank you, Senator Beutler. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, this, I know, is the third time that I can speak on this amendment, and I'm not going to move to reconsider. But if you vote for this modest amendment--it takes a very small portion out of the bill--you will be rid of me on this bill. I don't know that I could make a better offer than that. We are in the posterior portions of the session. We have a somewhat lengthy agenda before us today, and there are people who would like the opportunity to get to their proposals, and that is a position I can not only understand, but sympathize with and empathize with. Nevertheless, this bill that is before us does pose a grave situation. A public entity is just that, public. It's owned by the public, it's presumed to operate in the interest of the public. The moratorium that Senator Brashear very capably explains is for a period of two years. When you've got these behemoths in the telecommunications sector, with all of their engineers, their technocrats, their lobbyists, and every other type of person whose expertise is designed to make those operations money makers, how likely is it that a public entity within that two-year period is going to harm or hurt them? Who on this floor, including Senator Brashear, thinks that these public entities are concealing some engineers who already have developed some kind of technology which will put all of these private operations out of business, and they're just waiting for the opportunity to pounce? Well, they could have pounced already. They could be pouncing now. But Senator Brashear and everybody else, even those in the telecommunications industry who want this bill, know such a thing is not going to happen. This is a muscle-flexing bill. This bill is designed to show who is boss, and who runs things in this state. Once again, the ruralies have been bewitched, bebothered, and bewildered. They will stand up, on occasion, as young Senator Flood has done, very capably, I might add. The young man has great potential,

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great potential. In fact, I view him in the same way that Michelangelo may have viewed clay which is going to be shaped into one of the greatest sculptures of all time. (Laughter) Now I'm not praising the clay, I am praising the sculptor. (Laughter) Now...okay, now you better understand. But at any rate, this is one of those bills that I think rural senators, or senators who represent rural interests, should look at very carefully. First of all,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...if the bill is not adopted, the interests that you represent are not harmed. If it is adopted, they may be, and may not be. But if there is any question, if there's a tie--in baseball, tie goes to the runner, they say. The tie should go to the people you're to be representing. If you adopt my amendment, the interests that you represent are well protected. The bill can move right on, and they can have their study, and we'll all live happily ever after. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) Senator Baker.

SENATOR BAKER: Thank you, Mr. President, members. I am one of those ruralies Senator Chambers refers to, and quite frankly, this is not an issue. Broadband over power line, BPL, is not going to solve any of the issues that Senator Loudon brought up, in the rural areas. It's in the testimony from the committee hearing that I asked the question, what's this going to cost? It's going to cost \$5,000 per mile, was the basic estimate of what it would cost to put BPL into rural areas, and they're not going to serve Senator Loudon, Senator Fischer, myself, at \$5,000 per mile. It's not cost-effective for them. This is an urban issue, where you have a concentration of customers, like a Lincoln Electric Service here in Lincoln, where they could lease their infrastructure to a third party and provide this in a concentrated area. We have...we are served, as Senator Loudon said...we have high-speed Internet available in rural Nebraska. Senator Fischer had that question answered for her, I believe, by a provider behind the glass. I have two providers of

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high-speed wireless Internet. We have one in our house; one little dish sits on the end of the house, very effective. It's cost-effective, too. We also have dial-up through our local telephone provider, which is fine. It's cost-effective, also. It's just slow when you're dealing with large volumes of information. We have that. It's a service called Wild Blue. Our power companies had been providing some of it, I know, in western Nebraska. I do know that the telecoms are going to, in some cases, take this over and assume the customer service out in the rural areas, but it's...this is not...BPL is not the answer to high-speed Internet in rural areas. This is an urban issue, in my eyes. It's not going to help or affect rural customers. I think we'd be doing a disservice to not move forward with this bill, because this is an issue where the public entities, the power districts, the Lincoln Electric Service folks, people like that, are going to be competing with the private industry, and to not do anything is a disservice to the state of Nebraska. We need to go ahead and have...form the task force, get this thing moving, and give all the entities involved, whether they be public power or private telecoms, some direction. So with that, I oppose FA210 and support the bill as amended. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. On with discussion. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I think it is the broadness of this bill that's so stunning. And if you look at things in long, historical terms, you know there was a time in the late nineteenth century, coming up to the progressive era in the early twentieth century, where we relied totally on the private world and private competition. At the federal government level, it really wasn't until the 1920s that we began to recognize that there needed to be some balance, especially in these capital-intensive areas, where once somebody is ensconced, it's a virtual monopoly. And so, in the progressive era and on into the 1930s and 40s, what developed was a more balanced system, whereby there was regulation, in terms of some of the...many of the different types of utilities--the Public Service Commission, or there was public power. Municipalities were allowed to do retail systems in the

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areas of many different utilities. The leverage of purchasing a private system that wasn't functioning properly was put into the statutes, as you saw with the county telephone statutes, and with what we currently are advocating for our gas systems, our gas utilities. So we reached a kind of balance in things, and I guess I would ask you, what's been wrong with this balance? Have you perceived that Nebraska is worse served than other parts of the country, in any of these areas where the traditional balances have prevailed? Are we doing worse in electric utility, where we've taken it over entirely, publicly? Certainly not. We seem to be as good with our gas system--where there's a balanced system--as anyplace else in the country. Our telephone systems are excellent. We've reached to 99 percent, I think, coverage in the telephone system. We've done that in a little bit different way--through public subsidies--but it's, again, a balanced kind of system, involving both public and private. And now, here comes this bill which, to me, for no reason at all, the suggestion out there that somehow we aren't getting the proper investment. But I haven't noticed a lack of investment historically, as compared to other states. I haven't seen that argument made. I don't think it's true. To me, the broadness of this bill, shutting down public involvement, retail level, in all four of these broad categories of usage, is a reversion back to the mistakes we made in the late nineteenth century, of relying, in these areas, totally on the private sector. History has demonstrated to us clearly that government has to play a role, and we should review and argue always about the size of that role, the appropriateness of that role. But to simply roll back and prohibit the role at the retail level, and prohibit it temporarily at the wholesale level, to me is a large-scale, thoughtless reversion to a mentality that existed at one point in time in our history, and failed. I think it makes great sense to go more slowly here, and to be sure that there will, in fact, be competition, or where there will not be competition, to be sure there is some regulatory authority with some jurisdiction over, for example, Internet services where they may not be competitive, or video services where they may not be competitive, over which there is no regulation currently in our law. So I would encourage you again to think carefully about the broadness of this matter, and whether...

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SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...it's not a step backwards, rather than a step forward. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback. Again, listening to the discussion, I got to thinking about where we came from, what...how the communication system has developed over the last hundred years. And would that...if we would have had all publicly owned communications from the set go...I know the argument is there on both sides. I realize that, that we get stagnant. But say we would have had public power a hundred years ago, and we had public communications, which we did have, to a certain extent. You had your little cooperatives set up throughout the state of Nebraska. But if that would have remained that way and private industry had not gotten into the communications--you know, the Bell system was large at one time--but would we be where we're at today, if we wouldn't have had private enterprise doing the research, developing satellites so that the communications can work the way it does today? A hundred years from now, we'll...you know, we won't realize what it was like, looking back a hundred years. Just like we do today. We look back a hundred years, we had the telephone. But boy, I tell you what, it was pretty primitive. And I believe that private enterprise has made the big push, invested huge amount of dollars in developing these little gadgets that we carry around in our pocket now. Our grandparents would be amazed at the communications that we have today. You know, they wouldn't believe that you can stand out in the middle of a section with a little thing the size of a candy bar, and call anywhere in the world you want to go. So this is what does disturb me, that private industry has spent lots of dollars. They've made a lot of dollars, yes, they have. And they'll continue to do so. But where would we have been today without that kind of an investment? I believe we have a good regulatory agency in this state. We have a Legislature that is protecting our constitution. You know, I think we're in pretty darn good shape. And I hate to see us start going the other way and slapping the hands of the people that have brought to this

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ingenuity and scientific research that we use in communications. Public power does a good job providing electricity at a pretty darn reasonable cost in this state. And I think we should encourage them to continue doing the best job they can, providing us with electricity in every part of the state now. Our businesses, your center pivots, use power. Our industries are big users of power. And I still think that a lot of industries have stubbed their toe when they venture into territory that they're not experienced in. It takes a lot of money. Where will that come from? From projects our electrical suppliers are needing to deal with? You know, will we start losing some ingenuity...

SENATOR CUDABACK: One minute.

SENATOR JANSSEN: ...in the electrical field, because we're going to go into communications? I don't think so. You know, and I believe that our public power has their hands full right now, from other sources of energy that we can tap. I don't see why we don't have more electric generators in this state than we have. We have a lot of wind, and a lot of it is generated right here, but that's neither here...(laugh) Senator Landis, you know what I was talking about. But this is something that I think our public power needs to capture more of, is the wind generators. You know, 50, 75, 100 years ago, that was the only kind of power you had on a farmstead in Lewellen, Nebraska, was a wind generator. So we are letting something slip through our fingers.

SENATOR CUDABACK: Time, Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Janssen. No further lights. Senator Chambers, you're recognized to close on FA210, amendment to the committee amendments to LB 645.

SENATOR CHAMBERS: Thank you. Mr. President, in order that it's clear what my amendment will do, I'm going to explain it during this closing. The committee amendment, or Senator Brashear's amendment, at any rate, what we have before us right now, has

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taken the place of the bill. So I'm not working on the green copy. Section 5 of the amendment which is before us right now is the one that contains the prohibition or the ban placed on public entities, when it comes to providing these various services that are specified in Section 5. Nobody can persuade me that within the two-year period that this moratorium, as it's called, is designed to be in place, private investment is going to dry up or be reduced at all. That is not going to happen. The only place an argument of that kind would be made is on the floor of this Legislature, either because it's felt you don't pay attention, that you don't care, or that you're stupid. Which is it? I make hats. If your number comes up, put it on, but don't blame me for the size of your head being what it is. Private investment is not going to dry up. We know that there is a principle known as territoriality among animals of the same species. They have built into them this nature, which will lead them to fight off any member of their own species which encroaches on their territory, because nature has set up this rule, this law, this principle, that a certain amount of territory is essential in order for one of these critters to live and move, reproduce and have its being. If others of its species encroaches, there will not be enough of what is needed to survive, for the encroacher and the encroachee to survive. So they fight for that territory, but they fight only members of their own species. They are competing for the identical same thing, which both of them needs a certain amount of to survive, in order that the species may survive. These private entities and the public entities are not members of the same species. If the public entity were to use these poles and these wires and this other infrastructure to service rural areas, at some point, who do you believe is going to take over that infrastructure and use it for profit-making purposes? Isn't that how, originally, some telephone lines were strung, which ultimately wound up being given to Northwestern Bell, free? These private operations are not going to lose anything.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: They are marking their territory, and if they were animals, you would see it being done by urine. That's what these lions, canines, and others do to mark their territory.

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Birds do it by the songs they sing. People think they're singing cheerful, uplifting songs to please human beings. They are issuing a warning. Don't step into this territory, unless you're ready to fight. But creatures of the same species don't ordinarily fight to the death, because that is not the purpose in their fights. They fight to protect the territory, and when the intruder leaves, the fighting stops. Mr. President, I'm going to ask for a call of the house, and I'm going to ask for a roll call vote, and I want you all to think of this vote the same way you do when the roll is called up yonder. Will you be there?

SENATOR CUDABACK: Thank you, Senator...

SENATOR CHAMBERS: What are you going to do? That which is the righteous thing, or that which is the cowardly thing?

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Be righteous and bold. Is my time up?

SENATOR CUDABACK: Time...your time is up.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. There's been a request for a call of the house. All in favor of the house going under call vote aye; those opposed, nay. Record please, Mr. Clerk.

CLERK: 23 ayes, 1 nay, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators, please report to the Chamber. The house is under call. Members, please record your presence. Senator Cunningham, please. Thank you. Senator Pahls. Senator Cornett. Senator Johnson, please. Senator Don Pederson, please. Senators Brown, Stuhr, Wehrbein, and Kremer. Senators Thompson, Bourne, and Aguilar. The house is under call. Senator Aguilar, please record your presence.

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 683A, 689, 689A, 753
 LR 238

All members are present or accounted for. There's been a request for a roll call vote on the adoption of FA210 to the committee amendments. Mr. Clerk, please call the roll on the question, please. We've got a little machine malfunction here. It will be just a minute, please.

CLERK: (Roll call vote taken, Legislative Journal page 1815.) 10 ayes, 21 nays, Mr. President, on the amendment.

SENATOR CUDABACK: The amendment was not adopted. I do raise the call. Mr. Clerk, items for the record, please, or announcements.

CLERK: Mr. President, I have communications from the Governor. (Read re LB 66, LB 66A, LB 111, LB 111A, LB 117, LB 206, LB 334, LB 364, LB 499, LB 546, LB 546A, LB 566, LB 664, LB 664A, LB 689, LB 689A, and LB 753.) A second communication. (Read re LB 683 and LB 683A.) New resolution, LR 238 by Senator McDonald. That will be laid over. That's all that I have, Mr. President. (Legislative Journal pages 1815-1817.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Mr. Clerk, the next motion.

CLERK: Senator Chambers, FA211.

SENATOR CUDABACK: Senator Chambers, to open on FA211.

SENATOR CHAMBERS: Mr. President, I open by capitulating, and request that this motion be withdrawn.

SENATOR CUDABACK: The motion is withdrawn. Mr. Clerk?

CLERK: Senator Chambers, FA212.

SENATOR CUDABACK: Senator Chambers, FA212.

SENATOR CHAMBERS: Mr. President, this and the remaining amendments that I have up there, I would withdraw.

SENATOR CUDABACK: FA212, FA213, FA214, Mr. Clerk, please. They

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are withdrawn. Thank you, Senator Chambers.

CLERK: Mr. President, Senator Beutler, FA215.

SENATOR CUDABACK: Senator Chambers (sic), to open on FA215 to the committee amendments to LB 645.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Mr. Clerk, I would withdraw this amendment and refile it on Select, as I will do also with my remaining amendment, at the appropriate time.

SENATOR CUDABACK: So ordered.

CLERK: Senator Connealy, AM1722.

SENATOR CUDABACK: Senator Connealy, on AM1722. Is Senator Connealy...Senator Connealy, you're recognized to open on AM1722 to the committee amendments.

SENATOR CONNEALY: Thank you, Mr. President. I'd like to withdraw that.

SENATOR CUDABACK: AM1722 is withdrawn.

CLERK: Senator Connealy, AM1744.

SENATOR CUDABACK: Senator Connealy, on AM1744.

SENATOR CONNEALY: Thank you, Mr. President. I request that be refiled on Select.

SENATOR CUDABACK: So ordered.

CLERK: Senator Beutler, FA307, is that the one you'd like to refile as well, Senator?

SENATOR BEUTLER: That's right, Mr. Clerk.

CLERK: I have nothing further on the bill, Mr. President. I'm sorry, I have committee amendments pending, Mr. President.

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SENATOR CUDABACK: Back to discussion of the committee amendments, as stated by the Clerk. Open for discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, there will be two other...one other vote, in addition to this: the committee amendment, which will, I'm sure, be adopted by my craven colleagues; then a vote to advance the bill, which should fail. That's what I'm hoping for. Twenty-one votes were cast in opposition to my motion to strike Section 5 from this amendment. Section 5, to repeat it one more time, prohibits public entities from being involved in the activity that the bill discusses, for a two-year period, which has been labeled a moratorium. I would hope that the bill receives no more than the 21 votes which were cast in opposition to my amendment. This is not a good bill, but if it should happen to move...I thought we wouldn't have our lobbyist friends with us here today. Senator Schimek made it clear that my comments did not relate to the Nebraska Legislature, where people will be bought out. And I agree with her. But Senator Schimek, you know why they don't have to offer money to bribe our colleagues? Because the going price is a meat loaf sandwich and a chicken dinner. You don't get down to the cash. But I do not believe--and I'm speaking in all sincerity now--that any senator would sell out for a meat loaf sandwich and a chicken dinner. I do not believe that. However, the lobbyists are cagey. One which would not dare walk up to a senator and say, I will give you 35 cents if you vote a certain way, calculating what a Nebraska senator would sell out for, but would feel that if you give that meat loaf sandwich and a chicken dinner, the senator feels kind of a bonding and a sense of obligation. Not as a quid pro quo, not as one yielding to a bribe, but one who is responding to what is perceived as a kindness, a gesture of generosity. But from what I've heard about that food that you all have been swilling, the attempt was either to kill all of you, or to see how strong your stomachs were. And since I see all of you here, and some of you seeming to have flourished more than before eating, I'd say that they miscalculated, as far as harming you with it. The other day I had talked about how a lobbyist snatched the food out of the mouths of those who would benefit at the City Mission. But as Paul Harvey has done in the

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past, I chose not to tell the rest of the story until it suited my purpose to do so. The rest of the story is that the "Silver Fox," our Speaker, wrote out a personal check for \$700 to the City Mission, so that there could be something of value derived. And I think it's commendable. Now it means much less coming out of his pocket than mine, because my pockets are so thin.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: In fact, if I turned my pocket inside out, all you'd see were three keys, and nothing else. I had a hole in it before I came here this morning and passed through the lobbyists. Now that's gone. But at any rate, the next time I speak I'm going to address my remarks directly to the bill, but I wanted to acknowledge what the Speaker had done, because I think it restores the integrity of the Legislature, because some people could have gotten the idea that it was an empty gesture to say that food would be given to the City Mission, when it was known that that would not happen. That is not the way it occurred. Things do take place. But I personally want to thank the Speaker for what he did, and if he wants a contribution, I'll throw in a quarter or so. That's about all I can come up with. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion. Senator Chambers, you may continue.

SENATOR CHAMBERS: Now I will be completely serious and in dead earnest. But Ernest is not dead yet. Members of the Legislature, what is it that we have before us today? We have a bill which contains language authorizing a study, a study to determine whether these private investor-owned entities should have an open field, without any possibility of competition from public entities, which are fully capable of providing the same types of services, although maybe not at the same level, and there may be some other differences. So the issue is whether or not--while this study is going on, and for a year after it terminates--the public entities should be kept off the field, kept on the sidelines while the private entities run up and down the field, scoring at both ends, at will. I'm sure that none of you believe that these public...these private entities are going

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to be harmed within a two-year period from now, if these public entities are permitted, under the law, to pursue the possibility of providing these services. Senator Brashear has mentioned several times, and others have, that the retail end of it is not a matter of concern to anybody. Who is on the receiving end in the retail equation? The user, the public, the consumer. The other aspect goes to the use of what has been called the infrastructure of these public entities, for the purpose ultimately of being a part of a system for providing these services, and there would be competition with these private entities. Is there enough out here for the public and the privates to function and coexist? And I think there is. I do not think, in most instances, there will be direct competition. The only way to find out is to take your hands off and let the system operate. Let's see what these public entities can come up with during this two-year period. If nobody believes that realistically they can come up with any technology that is going to compete against the privates, why, then, put that in the bill? To show who's boss, to show who runs the Legislature, to show how things get done, and which things will and won't get done. Nobody and no interest will be harmed if we remove from this bill that prohibition on the public entities. Your vote on my amendment indicated there are not enough people willing to do that. I hope there are not enough votes to move this bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on the adoption of the committee amendments? Seeing none, Senator Baker, Chairman of the Transportation Committee, you're recognized to close on AM0316.

SENATOR BAKER: Thank you, Mr. President, members. This bill is very important to the Transportation and Telecommunications Committee. We did designate this our number one priority, and I ask that you consider that, because we did sit through hours and hours of testimony, and discussed this bill within the committee, worked with Senator Brashear's staff. I think to not pass this bill in its amended form would be a disservice to the citizens of Nebraska. We need to go ahead and proceed. This is an issue out there that needs addressed, and I certainly urge you to support AM0316, as amended. It's now replaced by AM1334,

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and it has certainly had a good discussion. And with that, I would yield the rest of my time to Senator Brashear, if he would care to use it.

SENATOR CUDABACK: Senator Brashear?

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. Thank you, Senator Baker. I...just to summarize again, we are providing within the amendment, we are now providing the ban on retail. We've talked about the moratorium on wholesale, that we've talked about, and the study with the composition of the task force that we have previously discussed, and a report back to this body on December 1, 2006, laying out how we ought to approach these subjects, given our unique status as the only public power state. I urge the adoption of the amendment and the advancement of the bill. I thank you for your consideration.

SENATOR CUDABACK: Thank you, Senator Baker and Senator Brashear. You've heard closing on AM0316, offered by the Transportation Committee to LB 645. The question is, shall those amendments be adopted? All in favor vote aye; opposed, nay. The question before the body is the adoption of the Transportation Committee amendments to LB 645. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 34 ayes, 2 nays, on adoption of committee amendments.

SENATOR CUDABACK: The committee amendments have been adopted.

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Discussion of advancement of LB 645 to E & R Initial. Senator Chambers.

SENATOR CHAMBERS: Mr. President, my last comment. I wonder if everybody who voted for the committee amendments intend to vote for the bill. I doubt it. I doubt that there are 34 people here who will vote for a bill such as this. But I could be wrong, and I'll find out whether I'm right or wrong, when the vote goes up on the board. I don't know whether people are

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going to vote for this bill on General File, then find their spine on Select File, or whether the die is cast. Moving from General File to Select File could be like Caesar crossing the Rubicon, but in that expression, we're not told what was on the other side of the Rubicon, awaiting Caesar. Maybe Caesar and everybody else will find out, but I certainly hope there will not be enough votes to advance this bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on the advancement of LB 645. Seeing no senators wishing to speak, Senator Brashear, you're recognized to close on the advancement of LB 645. Senator Brashear waives closing. The question before the body is, shall LB 645...Senator Chambers, for what purpose do you rise?

SENATOR CHAMBERS: A roll call vote.

SENATOR CUDABACK: There's been a request for a roll call vote. All in favor of the advancement of LB 645, Mr. Clerk, please call the roll, please. Senator Brashear, for what purpose do you rise?

SPEAKER BRASHEAR: Mr. President, I'd request a call of the house, please.

SENATOR CUDABACK: There's been a request for a call of the house. All in favor of the house going under call vote aye; those opposed vote nay. Record please, Mr. Clerk.

CLERK: 39 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The motion was successful. The house is under call. All unexcused senators please report to the Chamber. Unauthorized personnel please leave the floor. The house is under call. Senator Dwite Pedersen, please. Thank you. Senator Kremer, please. Thank you, also. Senator Kruse and Senator Thompson. Senator Dwite Pedersen, would you please check in. Thank you. Senator Kruse and Senator Thompson. Senator Thompson, the house is under call. All members are

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present or accounted for. There's been a request for a roll call vote on the question of advancement of LB 645. Mr. Clerk, please call the roll.

CLERK: (Roll call vote taken, Legislative Journal pages 1817-1818.) 33 ayes, 10 nays, Mr. President, on the advancement.

SENATOR CUDABACK: LB 645 advances. Mr. Clerk, do you have any items for the record? I do raise the call.

CLERK: I have nothing at this time, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to next agenda item, General File 2005 committee second priority bills. Mr. Clerk, LB 589.

CLERK: LB 589 by the Performance Audit Committee, signed by its members. (Read title.) The bill was introduced on January 18, referred to the Banking, Commerce and Insurance Committee for public hearing, advanced to General File. I do have Banking Committee amendments, Mr. President. (AM0743, Legislative Journal page 878.)

SENATOR CUDABACK: Senator Beutler, you're recognized.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, let me just say generally at the beginning here that this bill has to do with coordinating health benefits as between insurance companies who provide those benefits and the Department of Health and Human Services who provides Medicaid services or pays for Medicaid services. The bill has been through the Banking Committee. It has now been agreed to by every insurance company that took an interest in it. And I believe it has the support of the Department of Health and Human Services. It is a bill that, in its initial form, they had asked for. And the reason that I asked the Speaker to do his best to get it up this year is because the Department of Health and Human Services indicates that this bill will be worth \$1 million to \$2 million a year to us in either payments we don't make or payments we recover from insurance companies on the Medicaid side of our program. So

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it's an important bill and has been anticipated in the appropriations process and hopefully will be a part of our overall budget. We call it the coordination of benefits bill. And by the way, I want to especially thank Senator Mines for the work that he's done on this. He's guided us through several sets of negotiations with various insurance companies and has been a steady hand in this whole business. And processwise, what will happen here this morning, with your approval at least, is that I will give this opening. The committee amendments will be before you at that stage. The committee amendments, however, have been further modified by an amendment that Senator Mines will present, which actually represents the agreement that we've all come to with the insurance companies in general. It's called the coordination of benefits program because...and coordination of benefits, here's basically what it means. I'll just read it directly from the bill. It requires the insurance companies to provide to the Department of Health and Human Services information regarding the licensed insurers or self-funded insurers existing coverage for an individual who is eligible for a state benefit program. Medicaid, as you know, is a payor of last resort, so we need to know, Medicaid needs to know, what is out there in...by the way of private insurance to otherwise cover individuals that the state would be paying for. And coordination of benefits means that the department has certain rights that are covered in the bill to go to these insurance companies and to get information, coverage information indicating whether they're eligible for coverage under a particular plan and the benefits and the payments associated with any of that coverage which may exist. The whole idea of closer coordination and statutory reinforcement of closer coordination all came about pursuant to a performance audit that was done by your Performance Audit Committee last year. And that audit showed a couple of different things. First of all, it indicated, in the opinion of the committee, that the department itself needed to do some serious reorganizing and to get its own systems and personnel performing in such a way that they could, in fact, recover some of these costs that were being paid out in the Medicaid program. The department really was in a partial state of disarray in terms of being able to effectively deal with insurance companies and effectively get information. That was part of the problem. The other part of

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the problem as they related it to us is that certain insurance companies were in the habit of simply stonewalling them, not giving them information, not giving them complete information or not even responding at all. By the way, the two largest insurance companies in the state they indicated cooperated very well, Blue Cross Blue Shield, Mutual. It was with an array of other companies, many of them out of state, that they were having the biggest problems. But notwithstanding that our two largest insurers were cooperating, the amount of money involved in the noncooperation of some of the others was huge. So this seeks to follow up on what DHH (sic) indicated to us and to make certain provisions in law regarding the obligation of insurance companies to cooperate with the Department of Health and Human Services. And when we get to the actual committee...amendment to the committee amendment, Senator Mines will go through the amendment and tell you what it is that we're expecting the insurance companies to do by way of cooperation. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on LB 589 by Chairman of the committee, Senator Beutler. There are committee amendments as stated. Senator Mines, from the Banking Committee, you're recognized to open as Chairman.

SENATOR MINES: Just as soon as I find my notes, Mr. President, I'll be with you. What the heck did I do with them? Chris, would you use a little time.

SENATOR BEUTLER: Yield me some time, Senator, and I'll go forward.

SENATOR CUDABACK: Senator Mines.

SENATOR MINES: I just found it.

SENATOR CUDABACK: Thank you. You may now open.

SENATOR MINES: Thank you, Mr. President, colleagues. I apologize for the delay and I blame it all on Senator Redfield. (Laughter) And let me again thank Senator Beutler. This was a process filled with debate on all sides and I think we've come to a reasonable agreement and reasonable language for LB 589.

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AM0743 is the Banking Committee amendment and, Mr. President, I will be offering another amendment to replace AM0743 and that would be AM1707.

SENATOR CUDABACK: Mr. Clerk, please.

CLERK: Senator Mines would move to amend the committee amendments with AM1707, Mr. President. (Legislative Journal page 1760.)

SENATOR CUDABACK: Senator Mines, to open on your amendment.

SENATOR MINES: Thank you, Mr. President. As Chair of the Banking, Commerce and Insurance Committee and cosponsor of the amendment which is AM1707, this does become the bill, replaces the standing committee amendment, and I'd like to clarify the intent and purpose of this amendment. AM1707 becomes the bill, and the bottom-line purpose of the bill and the amendment is to provide that the state benefit programs, especially Medicaid, are truly what they're intended to be--payors of last resort when other insurance benefits are otherwise available. The bill as it emerged from committee authorizes HHSS to request coverage information from licensed insurers and self-funded insurers for the purposes of (1) determining an individual's eligibility for state benefit programs or (2) coordinating benefits with state benefit programs. The Legislative Performance Audit Committee requested the introduction of LB 589, which was heard by the Banking, Commerce and Insurance Committee on February 8, 2005, and subsequently advanced with standing committee amendments. The Medicaid program is designed by federal law to be the payor of last resort. That is, to the extent that there is an obligation to make a payment for medical assistance under a state plan, which is Medicaid, and a third party also that has legal liability to make payments for such medical assistance, the state is automatically assigned the right to receive payment from the third party. LB 589 was amended with this amendment and it would provide that such third-party licensed insurers or self-funded insurers, upon request of HHSS, are required to provide health coverage information for the purpose of determining an individual's eligibility for state benefit program benefits, including medical assistance and/or

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coordinating benefits with the state program. The bill provides that licensed insurers and self-funded insurers are subject to administrative sanctions, including substantial fines if they fail to pay coverage information to HHSS. Violations of the bill by licensed insurers would be unfair insurance claims settlement practices subject to enforcement by the Department of Insurance under the Unfair Insurance Claims Settlement Practices Act. Violations of the bill by self-funded insurers would be subject to enforcement by the Department of HHSS under provisions in the bill based on the Unfair Insurance Claims Settlement Practices Act. A limited benefit coverage are not subject to Medicaid third-party liability recovery because these policies do not pay for items and services defined as a medical...as medical assistance. That is, they don't pay for items and services that would otherwise be paid by Medicaid. The bill requires insurers writing...excuse me, the bill requires insurers writing a limited benefit policy upon the request of Medicaid to provide limited coverage information to HHSS for the sole purpose of determining whether such individuals are eligible for state benefit programs. The information cannot be requested or used by HHSS for the purpose of coordinating benefits against limited benefit policies. HHSS is authorized to impose civil penalties upon self-insurers for failure to coordinate benefits. Insurers are already subject to regulatory requirements for failure to make prompt payment of claims, including, as I mentioned before, the Unfair Insurance Claims Settlement Practices Act. AM1707 differs from the committee amendments in that it contains additional provisions intended to address concerns regarding the bill to a subspecies of health defined in AM1707 as limited benefit policy. These concerns were raised by Aflac, which is a Nebraska domestic insurance company. Aflac and companies like it market limited benefit or fixed indemnity policies. These policies, unlike major medical policies, provide payments directly to their policyholders triggered by situation or medical condition, and they do not provide payments to healthcare providers. AM1707 provides that in the case of one of these limited benefit policies coverage information requested by HHSS is limited to whether a specific individual has coverage and, if so, a description of that coverage, and such information shall be used solely for the purpose of determining an individual's

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eligibility for state benefits, including Medicaid. HHSS is authorized to recover amounts paid by state benefit programs from the party who received it as a result of the payment obligation of insurers or self-insurers where they have obligation to make such payments prior to Medicaid paying. That's a brief description of the amendment, Mr. President. Thank you.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the closing on 17...I mean the opening, I'm sorry, the opening on it. Open for discussion on the Mines amendment to the committee amendments to LB 589. Open for discussion. Senator Foley, followed by Senators Bourne and Chambers. Senator Foley. Sorry, Senator Foley.

SENATOR FOLEY: Thank you, Mr. President. I wonder if Senator Beutler would yield to a question.

SENATOR CUDABACK: Senator Beutler, would you yield to a question?

SENATOR BEUTLER: Sure.

SENATOR FOLEY: Thank you, Senator Beutler, and thank you for your work on this issue. I carried as my priority bill, about three years ago, a health insurance-related bill. And in fact, I remember that you were supporting that bill, and I thank you for that. And Senator Landis beat me to a pulp on that bill. But anyway (laugh), your legislation before us now does not in any way mandate that the self-insured plans conform their coverages to the Medicaid program, I don't think. I just want to confirm that.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: No, it doesn't.

SENATOR FOLEY: Yeah, I didn't think so. And when it speaks of payment obligations, it's just whatever would be obligated to be paid pursuant to the terms of that self-insured plan?

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SENATOR BEUTLER: That's right.

SENATOR FOLEY: And then the fines that are imposed, it speaks of civil penalties, those would be penalties consistent with the licensed providers?

SENATOR BEUTLER: You know, I can't say across the board, but I believe that's generally true.

SENATOR FOLEY: Okay. That's the way I'm reading the bill, so I just want to confirm my understanding of what you've done. Again, I thank you for your work on this issue. That's all I've got. Thank you.

SENATOR CUDABACK: Thank you, Senator Foley. Senator Bourne, on AM1707.

SENATOR BOURNE: Thank you, Mr. President, members. Would Senator Landis...or excuse me, Senator Beutler yield to a question or two, please.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Yes, sir.

SENATOR BOURNE: Senator Beutler, thank you. Listen, I wasn't involved in the debate on General File on this bill, but I am reading Senator Mines' amendment and the language in that amendment is similar to yours, in that in Section 7 the Legislature is giving authority to the Department of Health and Human Services to establish rule and reg for resolving any violation of a self-funded insurer of Section 3 of this act and for assessing financial penalties. Now again, this was in your amendment and so that has already been adopted. The language is identical to that in Senator Mines' amendment, and that's why I'm asking you. My question is, is why are we giving the Department of Health and Human Services the authority to regulate by rule and reg a self-funded insurer in this regard when we have a Department of Insurance that is charged with these matters?

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SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator, I...you know, let me check back and get you that information, because we are on General File here. But I don't know...

SENATOR BOURNE: Excuse me. We are on Select File, aren't we?

SENATOR BEUTLER: No, we're on General File.

SENATOR BOURNE: Okay. I'm ahead on the agenda. I guess what I...your...this amendment is an amendment to the Banking Committee's amendment. Correct? And that is the same...I was looking ahead on the agenda to Select File, and I see you are on General, but I would assume...and I didn't read the green copy of the bill. I'm looking at the committee amendment and Senator Mines' amendment to the committee amendment. And I'm assuming the green copy is identical, in that we give this authority to the Department of Health and Human Services, and I'm kind of concerned about that.

SENATOR BEUTLER: Yeah, Senator, as I understand it with regard to the self-funded insurers, they are not regulated by the Department of Insurance. And so it...and because this deals with the coordination of benefits and DHH (sic), it seemed entirely appropriate that the rule and regs should be right there.

SENATOR BOURNE: Okay, let me...actually maybe I should, because I was confused earlier, maybe I should ask this of Senator Mines.

SENATOR CUDABACK: Senator Mines.

SENATOR BOURNE: Would Senator Mines yield to a question?

SENATOR MINES: No. Yes, I will, Mr. President.

SENATOR BOURNE: (Laugh) Senator Mines. Can you tell me, was that in...this language in Section 7 which gives the Department of Health and Human Services that authority, was that in the

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green copy of the bill?

SENATOR MINES: I can't answer that right now. I'm sorry, I don't have it in front of me, but...

SENATOR BOURNE: Okay, so...

SENATOR MINES: Staff is looking that up.

SENATOR BOURNE: Okay. Your amendment that we're discussing now will become the bill.

SENATOR MINES: That's correct.

SENATOR BOURNE: Okay. And my question is, again, we have, and I've said this on the floor many times, I mean, we have a Department of Insurance that is...it's as good as it gets. It's unparalleled, I feel, in the entire country.

SENATOR MINES: I agree.

SENATOR BOURNE: Thank you. And I'm concerned that we, as a Legislature, have already charged our Department of Insurance with numerous things, one of which is regulating the insurance industry. And I'm trying to figure out why all of a sudden now we're delegating to the Department of Health and Human Services that authority to regulate a self-funded insurer.

SENATOR MINES: Senator Bourne, I was just told that we don't, "we" meaning the Department of Insurance, doesn't grant licenses to...

SENATOR BOURNE: I understand that, but if a self-funded insurer does something wrong, doesn't it come under the auspices of the Department of Insurance?

SENATOR MINES: I don't believe it does, Senator.

SENATOR BOURNE: So they have...the Department of Insurance has no authority in any regard on a third-party administrator that would be administrating...

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SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...a self-funded plan?

SENATOR MINES: As opposed to perhaps an ERISA or...

SENATOR BOURNE: Well, a self-funded plan is an ERISA plan. I guess that's...all I'm trying to say is that we have a Department of Insurance that's capable of doing this. And my question is solely, why are we giving the authority to HHS?

SENATOR MINES: It's the coordination of Medicaid benefits, is my guess, Senator. And the Department of Insurance isn't necessarily involved in the distribution of Medicaid benefits. Does that make sense?

SENATOR BOURNE: No.

SENATOR MINES: Okay.

SENATOR BOURNE: Actually I think what we may do is, I assume it's time to adjourn, maybe we'll look at this over the noonhour if you could perhaps visit with me about this. I'm just...

SENATOR MINES: Absolutely.

SENATOR BOURNE: I'm just simply concerned that we have a Department of Insurance that does things along this line anyway. Why are we asking an agency who's not familiar how this works to act as a regulator?

SENATOR MINES: It's a fair question.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I just wanted to make one thing clear to you with regard to these types of policies that are called limited benefit policies. Those, you will recall, are the types of policies where the insurance company generally pays a set amount to the

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insured. For example, if the insured has a policy, a cancer policy, it might make an outright cash payment to the insured as opposed to paying for provided services. Contrasting to that are the traditional indemnity policies where the insurance company traditionally pays directly to providers for specific services delivered to the insured. Now if an insurance company provides both those limited benefit and traditional indemnity policies, that company still must coordinate benefits with HHSS for the traditional indemnity policies. It is only the limited benefit policies that are exempt from the coordination of benefit provision of the bill. And that I hope you understand so everybody is treated alike. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Mr. Clerk, do you have items for the record, please?

CLERK: Mr. President, two items for the record: motions with respect to LB 683 and LB 683A by Senator Schimek. That's all that I have other than a priority motion, Mr. President. (Legislative Journal page 1818.)

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Thank you, Mr. Clerk. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the following legislative resolutions: LR 196, LR 224, LR 227, LR 228, LR 229, LR 231, LR 232, LR 233, and LR 234. Mr. Clerk.

CLERK: Mr. President, Senator McDonald would move to recess until 1:30 p.m.

SPEAKER BRASHEAR: Thank you, Mr. Clerk. You've heard the motion to recess. All those in favor signify by saying aye. Those opposed, nay. The ayes have it. We are recessed. Thank you.

RECESS

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SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good afternoon. Welcome to the George W. Norris Legislative Chamber. Senators, the afternoon session is about to reconvene. Please record your presence. Record please, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Mr. Clerk, any items for the record?

CLERK: Nothing at this time, Mr. President.

SENATOR CUDABACK: (Visitors introduced.) Mr. Clerk, inform the body where we were when we recessed for lunch.

CLERK: Senator Mines had moved to amend the committee amendments to LB 589, Mr. President. (AM1707, Legislative Journal page 1760.)

SENATOR CUDABACK: Thank you, Mr. Clerk. On with discussion of the Mines amendment to the committee amendment, AM1707. Senator Mines, there are no lights on. Senator Mines waives closing. The question before the body is adoption of the Mines amendment, AM1707, to the committee amendments to LB 589. All in favor vote aye; those opposed vote nay. Voting on adoption of the Mines amendment to the committee amendments, Banking Committee amendments. Have you all voted on AM1707 who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of the amendment.

SENATOR CUDABACK: The Mines amendment has been adopted. Anything...

CLERK: I have nothing further, Mr. President.

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SENATOR CUDABACK: Thank you, Mr. Clerk. Back to discussion of committee amendments. Senator Mines. Senator Mines, there are no further lights on. You may either close or you may speak.

SENATOR MINES: Again, the AM1707 become...

SENATOR CUDABACK: You're closing, Senator?

SENATOR MINES: I'm sorry?

SENATOR CUDABACK: Are you closing?

SENATOR MINES: I am closing. Thank you.

SENATOR CUDABACK: You may.

SENATOR MINES: The amendment became the bill and I think everyone has a general understanding what we're doing. There was a question by Senator Bourne before we adjourned for lunch, had to do with the regulation and oversight of these entities, and there's a concern that we are involving the Department of HHSS when, in fact, the Department of Insurance has the practices and the standards in place already, and in our bill we do assign that to HHSS to develop their own rules and regulations. That's a concern, I think, of anyone...of Senator Beutler and Senator Bourne and myself. Over the interim we would plan as I would ask the department or, excuse me, the Banking, Commerce and Insurance Committee to work with us and better understand how HHSS will develop their rules and regulations, become part of that, and understand what they're doing. Mr. President, thank you.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the closing on the Banking Committee amendments to LB 589. The question before the body is, shall those amendments be adopted? All in favor vote aye; opposed vote nay. Voting on adoption of the committee amendments, offered by the Banking Committee. Have you all voted on the question who care to? Record please, Mr. Clerk.

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CLERK: 33 ayes, 0 nays, Mr. President.

SENATOR CUDABACK: The Banking Committee amendments have been adopted. Anything further on the bill, Mr. Clerk?

CLERK: Nothing further.

SENATOR CUDABACK: Open for discussion. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. Would Senator Mines yield to a question or two?

SENATOR CUDABACK: Senator Mines, will you yield?

SENATOR MINES: Yes, I will.

SENATOR BOURNE: Thank you. Senator Mines, would you flesh out a little bit? You had discussed that there is going to be an interim study on this, and just to rearticulate my concerns, you know, we have a Department of Insurance that is as good as it gets and yet we're giving some authority to the Department of Health and Human Services to do a function that they don't do now, when we have an agency that already is well-versed in how this works. And is your interim study going to discuss or going to review how the process works now?

SENATOR MINES: Well, I would intend, Senator, that the study evaluate not only HHS and how they plan to institute rules and regulations, but also evaluate with the Department of Insurance to ensure that, in fact, this is the right mechanism. As we talked after we broke, there's a concern that we're allocating authority where maybe it might not need to be allocated, and if the Department of Insurance has standards and practices in place, that may be a reasonable alternative.

SENATOR BOURNE: Okay. And if you discover that during the interim study, it's your intent to introduce legislation to modify this if that need be?

SENATOR MINES: Yeah, I can say...I can say that. If the committee determines that authority should be with the

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Department of Insurance, I would ask the committee to do just that.

SENATOR BOURNE: Okay. So just so I understand what exactly is new in this bill and AM1707, AM1707 becomes the bill. What it does is set forth some obligations for both insurers and self-funded insurers to disclose information regarding insurance coverage to the Department of Health and Human Services to ascertain if a person, who qualifies for Medicaid, also has some form of private health insurance that should pay the bill.

SENATOR MINES: That is correct.

SENATOR BOURNE: Okay. So the new...what, really, what your bill does now, after amended, is give some additional teeth to Health and Human Services to compel insurers and self-funded insurers to disclose whether or not there is coverage. It provides for a civil penalty and gives HHS the authority to adopt rule and reg...

SENATOR MINES: Yes.

SENATOR BOURNE: ...regarding this disclosure.

SENATOR MINES: Yes, it does.

SENATOR BOURNE: Okay. Let me ask you this. Language on page 4, down at the bottom, and it says, "If at the time the department pursues recovery, the licensed insurer or self-funded insurer has already made any payment, the department may pursue recovery of that payment only from the party who received it." Now is that...that's...they have the authority to do that today? Are you aware?

SENATOR MINES: They do not.

SENATOR BOURNE: Okay.

SENATOR MINES: Do they? It...well, I stand corrected, Senator. I understand they do have that authority.

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SENATOR BOURNE: Okay. So basically what we're doing is setting a mechanism to just add some teeth to the disclosure process. If an insurance company...and as I understand it, it's insurance companies from outside of the state...

SENATOR MINES: That's correct.

SENATOR BOURNE: ...that are basically thumbing their nose at HHS, saying, we're not going to tell you.

SENATOR MINES: That's correct.

SENATOR BOURNE: Okay. And you plan to be involved as a committee. You plan to be involved in the rule and reg process that the Department of Health and Human Services is going to undertake this summer?

SENATOR MINES: Well, I think the intent would be let's allow HHSS to develop their rules and regs, and then discuss with them and understand what they're doing and why they're doing just that; not to be a part of the rule-making process...excuse me, the drafting of the rules and regs, but be part of an approval, if you will.

SENATOR BOURNE: Okay. Okay. Thank you, Senator Mines. I appreciate your answering the questions.

SENATOR CUDABACK: Thank you, Senator Bourne. (Visitors introduced.) Senator McDonald, on the advancement.

SENATOR McDONALD: Mr. President, members of the body, I would like to ask Senator Mines a couple of questions.

SENATOR CUDABACK: Senator Mines, would you respond, please?

SENATOR MINES: Yes.

SENATOR McDONALD: Yes, Senator Mines, you spoke briefly before we adjourned for lunch about companies that offer voluntary benefits, such as AFLAC and others. Those are indemnity plans. How will they be affected by this legislation?

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SENATOR MINES: They are...they are broadly included as a subspecies, if you will, as defined as a limited benefit policy, and they are...their inclusion is to the point that if the Department of HHSS requests information, they are to provide that information on any...of their insured, but they are not a Medicaid payer. So they are somewhat held harmless or held exempt from some of the language here.

SENATOR McDONALD: I understand the last part of the answer. Would you broaden the explanation on the first part?

SENATOR MINES: Well, if HHS, or the Department of Insurance, if that happens to be the case later on, determines that an insured has Medicaid...has a Medicaid expense and they, in turn, receive payment from other payers, that those monies go directly to the Medicaid payment or the health provider. With an AFLAC program, that...those monies are paid direct to the insured. Thus, if HHS wants to know if they receive monies, they will tell them that those monies have been paid but they don't fall under the Medicaid reimbursement plan.

SENATOR McDONALD: Okay. And will that be part of the study this summer?

SENATOR MINES: Yes, it will. Yeah, that...this whole thing will be...continue to be evaluated and studied.

SENATOR McDONALD: Thank you.

SENATOR MINES: Thanks.

SENATOR CUDABACK: Thank you, Senator McDonald. Further discussion on the advancement of LB 589? Seeing no lights on, as Chairman of the committee, Senator Beutler, you're...as Chair, Senator Beutler's choice to close, if he cares to.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, again, the basic thrust of the bill is to encourage the coordination of benefits to allow the department to better coordinate benefits and, thereby, to recover, in the estimate

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that was provided to the Appropriations Committee, between \$1 million to \$2 million a year. So this is a very significant bill in helping with our budget. I believe it to be clean of all problems, with the possible exception that you might want to consider a different enforcement agency, whether it's Department of Insurance or Department of Labor. But the debate on which is the appropriate enforcement agency should not get in the way of having the basic bill in place, because it's just very important in terms of the recovery of money and of getting started in this process of coordinating benefits. So I hope you will advance this to Select File. Thank you.

SENATOR CUDABACK: Thank you, Chairman of the committee Beutler. All in favor of advancement of LB 589 to E & R Initial vote aye; those opposed vote nay. Voting on advancement of LB 589 to E & R Initial. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement.

SENATOR CUDABACK: LB 589 advances. Mr. Clerk, LB 589A.

CLERK: LB 589A by Senator Beutler appropriates funds to carry out the provisions of LB 589.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Beutler, to open on LB 589A. Senator Beutler, did you...

SENATOR BEUTLER: Well, to be honest with you, Mr. Chairman, I forgot to look to see that we had an A bill. The appropriation for 2005-2006 shall be reduced by \$1 million and \$1.5 million if LB 589 becomes law. And again, there's a reduction in the second year of \$2 million General Funds, \$3 million federal funds, if this becomes law. So this is the benefit that I was discussing with you earlier, and they've put it into the form of an A bill, I see. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on LB 589A. Open for discussion. Seeing no lights on, Senator Beutler, did you wish to close? Senator Beutler waives closing. The question before the body is, shall LB 589A advance

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to E & R Initial? All in favor vote aye; opposed vote nay. The question before the body is LB 589A, and whether or not it should advance to E & R Initial. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB 589A.

SENATOR CUDABACK: LB 589A does advance. We now go to Select File 2005 priority bills, 30-minute division, following rules apply to a 30-minute division. Mr. Clerk, LB 538.

CLERK: LB 538, Senator Flood, I have Enrollment and Review amendments. (AM7106, Legislative Journal page 1754.)

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 538.

SENATOR CUDABACK: You're heard the motion to adopt the E & R amendments to LB 538. All in favor of the motion say aye; opposed to the motion, nay. They are adopted.

CLERK: Senator Brashear would move to amend with AM1711. (Legislative Journal pages 1820-1821.)

SENATOR CUDABACK: Senator Brashear, to open on AM1711 to LB 538.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. This amendment makes two changes to LB 538, which is the bill as proposed by the Community Corrections Council, which you advanced from General File. First, the bill added coverage for probation officers to the crime of "assault on an officer." There are several places in the statutes where this language is required, and one of those references was missed, so we are correcting that. The amendment also adopts clean-up language that will harmonize all the sections so as to include probation officers. In addition, the amendment adopts the provisions of LB 703, which was offered by Senator McDonald, as amended by the

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Judiciary Committee. That bill was designated as a Speaker priority bill and was advanced on an 8-0 vote by your Judiciary Committee. The provisions of LB 703 are entirely consistent with the community corrections effort, and I endorse the addition of these provisions to this bill. And Mr. President, with that, I would like to yield the balance of my time to Senator McDonald to explain her LB 703, which is contained in AM1711. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear. Senator McDonald, about 8, 40.

SENATOR McDONALD: Mr. President, members of the body, as amended by the Judiciary Committee, LB 703 gives the Board of Parole authority to grant medical parole to a committed offender who is terminally ill or permanently incapacitated based on their medical condition. Medical parole would not be available to offenders under a sentence of death or life imprisonment. The Department of Corrections would identify offenders who may be eligible, based on their medical records. The Board of Parole then reviews the medical, institutional, and criminal records, in addition to any other exams or investigations ordered by the Board. The decision to grant medical parole and establish conditions of release belongs solely to the Board of Parole. And let me repeat that: The decision to grant medical parole and establish conditions of release belong solely to the Board of Parole. The Board of Parole may place conditions of release on medical parole, including placement for medical treatment. The term of medical parole is for the remainder of the offender's sentence. The Parole Board may be revoked if a person's medical condition improves to the extent that he or she would not be eligible for medical parole. Medical parole may be revoked if a person violates any condition of release established by the Parole Board. What this says is it just gives the Parole Board another option to parole someone who is terminally ill, and that would allow them to have the remainder of their life at home. And as you and I know, those last few hours, months, and weeks of a person's life, if they could spend that at home with their loved ones when they are at no threat to anyone in society, that allows them to die in some sort of dignity. And that's basically what my bill, LB 703, would have

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done. So thank you.

SENATOR CUDABACK: Thank you, Senator McDonald. Senators now wishing to speak to AM1711...did you wish to have the remainder of your time back? Senator Brashear did not wish to. Senator Don Pederson...Dwite Pedersen, rather.

SENATOR Dw. PEDERSEN: Thank you, Mr. President, members of the Legislature. I stand briefly just to say this is really a good thing. It is the most compassionate thing I think we can do. No matter what these people have done, they are no longer a danger and I think we need to take care of them and their families. And in the meantime, it would also be helpful to the state. Thank you.

SENATOR CUDABACK: Thank you, Senator Pedersen. Further discussion? Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. If I could, I'd like to ask Senator McDonald a question or two.

SENATOR CUDABACK: Senator McDonald?

SENATOR McDONALD: Yes.

SENATOR SCHIMEK: Senator McDonald, I too think this is a very humane thing to do, but I wonder--did I hear you say that anybody who was in for life or who was on death row would not be eligible for this?

SENATOR McDONALD: Yes, you're absolutely right.

SENATOR SCHIMEK: And why? I mean...I'm not saying that they should be. I'm wondering if they should be, because if they are no longer a danger to society...

SENATOR McDONALD: And I would guess the reason is that they, if they are in there for life, are certainly not eligible for parole.

SENATOR SCHIMEK: No.

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SENATOR McDONALD: If you're not eligible for parole, then this is not something that would work for you. This is just merely another option for the Parole Board to use, to see that somebody is paroled, just another option. So if you're not eligible for parole, then this is not an option.

SENATOR SCHIMEK: But this is a different kind of parole we're talking about. Okay, I'll accept your answer, and we could discuss it, but if that's the way it is, then that's the way it is. This is better than not having any at all. And then the second thing I want to know is, when these prisoners are released on parole, who takes care of their medical expenses then?

SENATOR McDONALD: And that's something has to be taken care of prior to being paroled. Let's face it, none of us want to see them lack any medical protection once they are paroled. And so, in order for them to be paroled under a medical parole, it has to be set up that they are either to be taken care of by their family, that if they are a veteran they have veteran benefits, if they are being taken care of by Medicaid, they are eligible for Medicaid. So they have to make sure that they do have the medical needs to be taken care of, because we certainly don't want them to be paroled and not be medically taken care of. And so that's part of the process, that if they are under medical parole, that they do have the wherewithal, someone will be taking care of their need, their medical needs.

SENATOR SCHIMEK: So it would be possible that somebody who would be eligible and certainly worthy of consideration for this kind of parole couldn't be, because they don't have any health insurance. I mean, they might be of that age when they're not on Medicaid or Medicare or anything like that.

SENATOR McDONALD: You know, and that's a good question. I think that the committee was working on an amendment--and we might ask Senator Bourne--if they are eligible for medical parole, the Parole Board does use that as an option, that the state would still take care of them, if there were no other means.

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SENATOR SCHIMEK: Right.

SENATOR McDONALD: And that's something that I think...

SENATOR SCHIMEK: That's what I was curious about.

SENATOR McDONALD: ...was to be in the plan, and I want to make sure that that still is.

SENATOR SCHIMEK: Okay, then thank you very much. And if I might, then, I'd like to ask Senator Bourne a question, Mr. President.

SENATOR CUDABACK: Senator Bourne, would you yield?

SENATOR BOURNE: Yes.

SENATOR SCHIMEK: Senator Bourne, did you hear the little discussion that Senator McDonald and I just had?

SENATOR BOURNE: I did, and that is one...that was one of the questions, or one of the things that Senator McDonald and I discussed. We are going to look at this over the summer. Right now, there is hospice service, as I understand, provided by the prison, in the prison system, now. So I think the medical bills would still be paid for by the state, or some other entity. But that is something that we're going to look at over the summer.

SENATOR SCHIMEK: Okay, thank you very much.

SENATOR CUDABACK: Thank you, Senator Schimek. Senator Combs, on the Brashear amendment.

SENATOR COMBS: Thank you, Mr. President, members of the body. I just want to stand up and say I do support this bill. I think that end-of-life issues are extremely important, and just because someone has been a prisoner, they're eligible for parole, they should be allowed to die with dignity. That's what the hospice program is all about. Having worked in home health and hospice, I can tell you that it is death with dignity. It

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involves the people that are directly related to the person usually, or a close friend or family member who agrees to take care of that person for 24 hours a day. I do believe the cost would be less, because if they are eligible for hospice, hospice pays for everything with no co-pay. And that is an entity that is funded separately from what the Medicaid program would be, to some degree. So it might even be less costly, if you're just talking a bottom dollar. But I'm talking from the human aspect, the human standpoint, this is the right thing to do for someone who is a dying patient, regardless of where they are. And I understand and appreciate, Senator Schimek, your concern, that it's only people that would be eligible for parole. Perhaps that could be revisited, that if we see that this works, people that perhaps aren't...I don't want to commit to anything, but I do want to say that I do appreciate her concern here and agree with her that we do have to start somewhere. So I thank Senator Brashear for bringing this bill, and I thank the people that have worked on it, and I do support it. Thank you.

SENATOR CUDABACK: Thank you, Senator Combs. Senator Brashear, there are no further lights. You are recognized to close.

SPEAKER BRASHEAR: Mr. President, members of the body, at core this is the Community Corrections Act legislation. I urge its adoption, and certainly urge the adoption of this amendment, which is entirely consistent with the philosophy of Community Corrections. Thank you for your attention.

SENATOR CUDABACK: Thank you, Senator Brashear. You've heard the closing on AM1711. The question before the body is whether that amendment should be adopted. All in favor vote aye; all opposed vote nay. The question before the body is the adoption of the amendment offered by Senator Brashear to LB 538. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of Senator Brashear's amendment.

SENATOR CUDABACK: The Brashear amendment has been adopted.

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CLERK: Senator Flood, I have no further amendments to the bill.

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 538 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 538 to E & R for engrossing. All in favor say aye. Is there any discussion? Seeing none, opposed, nay. It is advanced. Mr. Clerk, LB 538A.

CLERK: I have no amendments to LB 538A, Senator.

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 538A to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 538A to E & R for engrossing. All in favor of that motion say aye. Opposed, nay. It is advanced. Mr. Clerk, LB 484.

CLERK: LB 484, Senator, I have E & R amendments, first of all. (AM7112, Legislative Journal page 1754.)

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 484.

SENATOR CUDABACK: There's been a motion to adopt the E & R amendments to LB 484. All in favor say aye. Opposed, nay. The E & R amendments are adopted.

CLERK: Mr. President, Senator Louden has AM0995.

SENATOR CUDABACK: Senator Louden, to open on AM0995 to LB 484.

SENATOR LOUDEN: I wish to have that brought to the bottom of the list.

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SENATOR CUDABACK: It is so ordered.

CLERK: Senator Foley, AM1699.

SENATOR CUDABACK: Senator Foley.

CLERK: I had a note, Senator, from earlier. I don't know if it's still applicable.

SENATOR FOLEY: I'd like to withdraw that amendment, Mr. Clerk.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, Senator Foley would move to amend with AM1728.

SENATOR CUDABACK: Senator Foley, to open on AM1728 to LB 484.

SENATOR FOLEY: Yeah, Mr. President, I'd like to pull that amendment and refile at the bottom, please.

SENATOR CUDABACK: So ordered.

CLERK: Senator Foley, AM1748. (Legislative Journal pages 1821-1823.)

SENATOR FOLEY: Yes.

SENATOR CUDABACK: Senator Foley, to open.

SENATOR FOLEY: Thanks. Thank you, Mr. President and members. The...what you see on your computer screen is three amendments. The amendment that we're going to take up first is the amendment that consolidates the work that Senator Loudon and I have done on a couple of issues, and we'd ask you to consider this consolidated amendment, and then we won't need the other two. I'll describe my portion of this amendment, and then I'll yield to Senator Loudon. He can speak to his work on this amendment. The amendment, at least my portion of it, relates to the revision to the child labor laws. It...my work in this area was

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reflected in LB 749, which was heard by the Business and Labor Committee earlier this year. There was no opposition testimony, and the bill was advanced out of committee in an amended form, without any dissenting votes. Essentially what the bill does, in the amended form, is prohibit young people, ages 14 and 15, from being employed, and I underscore the word "employed," as door-to-door salespersons. The Lincoln Police Department came to me earlier this year and asked me to carry the bill for them. There's been some difficulties with a group called Teens of Tomorrow, which is a group that is headed up by a man who has a knack, apparently, of winning the confidence of young people and enticing them into selling \$7 candy bars door to door, on the guise that some of the money might eventually go to a charitable endeavor, when in reality the kids who do this earn very, very little money. The man who runs the program apparently takes the lion's share, and we don't know if any of it ever goes to a charitable endeavor. The kids are taken in vans off to distant neighborhoods, sometimes even distant cities, where they are out of contact with their family. There's no communications, and they sometimes find themselves in very awkward and dangerous situations. And the police departments in Lincoln and Omaha have been concerned about this for some time, but haven't been able to stop it. The bill, and I want to stress this, the bill in no way stops Girl Scout cookie sales or Boy Scouts who might sell popcorn, or whatever Boy Scouts sell these days. It doesn't stop school groups from sending kids out door to door, trying to raise money in charitable efforts, because those are not employment situations. Those are charities. What this bill only relates to is employer/employee relationships. And it provides simply that children ages 14 and 15 cannot be employed as door-to-door salespersons. That's the substance of the amendment from my perspective, and at this point I'd like to yield to Senator Loudon, so he can speak to his portion of the amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Foley. Senator Loudon, about 7, 15.

SENATOR LOUDON: Thank you. AM1748 to LB 484 contains my bill, which was LB 245. LB 245 is in the Business and Labor Committee, having had its public hearing on January 31. The

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bill was overshadowed by the work that the committee needed to do this year on the Unemployment Insurance Trust Fund. That work has now been successful with the passage of LB 739 this season. LB 245 is a small bill that would have a big impact on our low-income, elderly people. It's not a high-profile bill like LB 739, but it is important for a very small segment of our population. LB 245 was adopted last year as an amendment to Senator Cunningham's LB 1049. I brought the idea forward as a separate bill this session. Anyone who receives social security benefits is not eligible for full unemployment compensation. A retiree on a railroad pension fund is eligible. A retiree on military service pension and a teacher retirement person is eligible for full unemployment compensation. Only social security retirees have their benefits deducted from any unemployment insurance they may receive. This isn't about a huge number of recipients. First of all, anyone on social security must be able to work in order to hold a job that pays into unemployment insurance. Secondly, it is usually elderly people that are trying to supplement their social security benefits. So the pool of people that would potentially be affected is a small one, made up of elderly, low-/moderate-income social security recipients. The Department of Labor, Unemployment Insurance Division, estimates between 1,200 and 1,300 people are in that pool. The cost to the state's Unemployment Insurance Fund is estimated to be in the vicinity of \$60,000. We all know that the Unemployment Insurance Fund was the subject of serious concern and discussion this year. Any proposal that would increase the amount of benefits being paid is going to be carefully considered, as it should be. The crisis of the Unemployment Fund was not created by older, low-income/moderate-income workers. They did not cause the problem. That should not be used as an excuse to deny full benefits to this small group of workers. AM1748's impact on the fund would be minimal, but its impact in the lives of senior citizens would be significant. A company that employs a senior citizen who draws social security does not have a reduction in the unemployment insurance premium for that person. The company pays a full premium, as it would with any other employee who is not a social security recipient. This reduction strikes me as a penalty for being over a certain age, and for trying to supplement one's income. Seniors who need to

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supplement social security should have the support if they wish to work, in order to avoid using public assistance or giving up their homes. LB 245 had no opponents at its hearing in January. It was supported by the Department of Labor, and I have talked with representatives of the business community about this amendment and have been assured that that is not something they oppose. I urge your adoption of this amendment, to make a huge difference in the lives of low-income, older Nebraskans. Thank you.

SENATOR CUDABACK: Thank you, Senator Louden. On with discussion of the Foley amendment. Senator Smith, followed by Senator Flood.

SENATOR SMITH: Thank you, Mr. President. Would Senator Foley yield to some questions?

SENATOR CUDABACK: Senator Foley?

SENATOR FOLEY: Yes.

SENATOR SMITH: Senator Foley, I glanced at your handout here from the Journal Star, and it talks about a 12-year old soliciting business in Lincoln. Does your amendment cover the 12-year-old?

SENATOR FOLEY: It's my understanding, Senator Smith, that a 12-year-old could not be in an employer/employee relationship.

SENATOR SMITH: Okay.

SENATOR FOLEY: That you have to be either 14 or 15 to get a limited work permit.

SENATOR SMITH: So...

SENATOR FOLEY: And of course, at age 16, you can work (inaudible).

SENATOR SMITH: ...there's a violation of the law already, with the 12-year-old.

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SENATOR FOLEY: That would be my understanding, that a 12-year-old would already be in violation of the law. I think that's correct.

SENATOR SMITH: And was there any action taken against this nonprofit organization for exploiting a 12-year-old?

SENATOR FOLEY: That I don't know, Senator. Good question, though.

SENATOR SMITH: But you maintain that it would only apply to 14- and 15-year-olds?

SENATOR FOLEY: Because a 14- and 15-year-old child can work, legally, with a permit, but I don't believe--and maybe there's somebody on the floor who can correct me on this--I don't believe a 12-year-old can get a work permit. I think the detasseling is the one area where we've limited...where we have some limited opportunities for work for underage children. But for a regular student work permit, you have to be 14 or 15.

SENATOR SMITH: Are you aware of any action taken against any situations like this? I mean, to me, if there's already an egregious action with a 12-year-old, there should be some sort of history as to eliminating that. I mean, I have concerns about 14- and 15-year-olds as well, but I mean, if the problem is truly younger than that, I question whether the state needs to be the parents of just 14- and 15-year-olds, instead of 12-year-olds.

SENATOR FOLEY: I understand your concern, Senator. I think the 12-year-old situation is already covered in law, but I don't...and I don't why the employer in that case was not...somebody didn't go after that employer in that instance. I can't speak to that. And maybe they did; I just am not aware of it.

SENATOR SMITH: Okay, thank you, Senator Foley. I have to say that I'm rather torn on this. I think it's a rush to regulation that is a bit premature. I'm just very torn on this, but again,

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I think the body needs to realize that we are acting as parents here. And I'm not sure that the issue has really been studied enough. I mean, if there was an example of a 12-year-old working, when they already shouldn't be, and it's already a violation of the law and the police department is complaining about it, my question is, what did the police department do? And I have serious concerns about that. Perhaps Senator Foley could respond.

SENATOR CUDABACK: Senator Foley.

SENATOR FOLEY: Yes, thank you again, Senator Smith. I'm informed that the group in question, Teens of Tomorrow, is based in Iowa, and that was part of the difficulty of going after them.

SENATOR SMITH: Okay, so the difficulty...being an Iowa company, how does addressing 14- and 15-year-olds address the 12-year-old problem, if it's an out-of-state situation?

SENATOR FOLEY: Senator, it...I don't know what was done with the company with respect to the 12-year-old child. I don't have information on that. But I was told that there was some difficulty because they were an Iowa-based company. Now an Iowa-based company is still subject to our laws when they employ people in our state, and it would appear that there was a violation there. Why somebody didn't go after them, I don't know. But...

SENATOR SMITH: Okay, and I appreciate that. Let me reiterate my concern, is that if we didn't take action, if no one in Nebraska took action on the 12-year-old situation, why would we think that they'll take action on a 14- and 15-year-old situation? Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Beutler, on the Foley amendment.

SENATOR BEUTLER: Senator Cudaback, Senator Foley, I'm just trying to get my hands around the approach you're taking here. And I wanted to go back and refer to the discussion I think we

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had last year, or maybe two years ago now, on detasseling. And as you will recall, we allowed children who were over 12 and under 16 to get into trucks and cars and vans and be transported to other places for the purpose of some...for the purpose of work. And what we did in that situation was to set out a number of criteria with regard to employment in that area, in addition to what was already in the statute, rather than prohibiting it altogether, since it was seen as a potentially beneficial thing for children, and a potentially beneficial thing for society, I guess. Why in this instance do you feel that it's appropriate to ban this altogether?

SENATOR FOLEY: Well...

SENATOR BEUTLER: I would yield to Senator Foley, Senator Cudaback.

SENATOR CUDABACK: Senator Foley, would you respond?

SENATOR FOLEY: Yes, and thank you, Senator Beutler. The Lincoln Police Department made the case--and I think they're on target here--that asking a child to go door to door in an employment situation, particularly in the way it was handled in this particular instance with the Teens of Tomorrow, really was not a prudent thing to have a child do. To take a child in a van off to a distant city or distant neighborhood, where they're out of communication with their family, out of communication with the employer, and just set them off in the neighborhood, going door to door, could result in a lot of very difficult situations, and it did. And the police departments have been concerned about it, they're aware of it, they've had complaints on it, and they feel, and I agree, that if young people are going to work, that this is probably not the best place for them to work.

SENATOR BEUTLER: In that event, why would you allow them to do it if it's their own individual entrepreneurial endeavor?

SENATOR FOLEY: Well, presumably, if they're involved in an entrepreneurial endeavor--this is a presumption--that their family is more aware of what they're doing, and more involved in

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it, and we just felt that there were a number of instances where young people were doing those kinds of things that were worthwhile, and we didn't want to discourage that. But in the case at hand, the case that brought this to us was a man in Iowa who was picking up kids in schoolyards in Lincoln, for example, and carting them off to Omaha or elsewhere...

SENATOR BEUTLER: Without their parents' permission?

SENATOR FOLEY: I don't know, Senator. Can't speak to that.

SENATOR BEUTLER: Okay. But let me ask you...I...the definition of his or her own individual entrepreneurial endeavor, which apparently would be an exception and be allowable...if a company sends me a big box of greeting cards, birthday cards, sick cards, and I pay for the box, the whole box, and if I sell them all at a certain price, then I'm going to make some money on it, but essentially I pay them for the whole box, and I have to go out, door to door, and sell those...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...to a certain quantity level in order to make some money. Is that my own entrepreneurial endeavor? That's what I did as a kid, so I was interested in where that came down in your...

SENATOR FOLEY: Yeah, that's a good question, Senator. That's something we've thought about, as well. It gets to questions related to who's an employee and who's an independent contractor. And the bill speaks to employer/employee relationships.

SENATOR BEUTLER: So it's your intent that this would follow whatever rules already exist, with respect to what is an independent contractor and what is an employee?

SENATOR FOLEY: Yes, yes.

SENATOR BEUTLER: Okay. Thank you, Senator Foley.

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SENATOR CUDABACK: Thank you, Senator Beutler. Senator Smith, on the Foley amendment.

SENATOR SMITH: Thank you, Mr. President and members. It's not my intent to talk this bill or amendment to death, but I do urge the body's caution on a rush to regulation. I think that there could be unintended consequences, and I especially draw emphasis to the fact that there has not been prosecution on more egregious actions than what we are seeking to bring action about, perhaps, or invite action about. So I just urge caution by the body. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Further discussion on the Foley amendment. Senator Foley, there are no...Senator Foley waives closing. The question before the body is adoption of AM1748, offered by Senator Foley, to LB 484. All in favor vote aye; opposed, nay. The question before the body is the Foley amendment to LB 484. Have you all voted on the AM1748 who care to? Record please, Mr. Clerk.

CLERK: 28 ayes, 2 nays, Mr. President, on the adoption of Senator Foley and Loudon's amendment.

SENATOR CUDABACK: The Foley-Loudon amendment has been adopted.

CLERK: Senator Loudon, I now have...back to AM0995, Senator.

SENATOR CUDABACK: It is withdrawn.

CLERK: Senator Foley, AM1728.

SENATOR CUDABACK: Senator Foley?

SENATOR FOLEY: I'd like to withdraw that, please.

SENATOR CUDABACK: It is withdrawn.

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Flood, for a motion, please.

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LB 13, 484

SENATOR FLOOD: Mr. President, I move the advancement of LB 484 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 484 to E & R for engrossing. Open for discussion. All in favor say aye. Opposed, nay. LB 484 is advanced. Mr. Clerk, LB 13.

CLERK: LB 13, E & R amendments, first of all, Senator. (AM7115, Legislative Journal page 1778.)

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 13.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 13. All in favor say aye. Opposed, nay. The E & R amendments are adopted.

CLERK: Senator Cunningham would move to amend, AM1736. (Legislative Journal page 1823.)

SENATOR CUDABACK: Senator Cunningham, to open on AM1736 to LB 13.

SENATOR CUNNINGHAM: Thank you, Senator Cudaback and members. This amendment is truly a technical amendment. The first part of it just changes some grammar, and the second part of it is two places that there's clarification. That's all there is to this amendment.

SENATOR CUDABACK: You've heard the opening on AM1736, offered by Senator Cunningham. Open for discussion. Senator Cunningham, there are no lights on. You're recognized to close. Senator Cunningham waives closing. The question before the body is the adoption of AM1736. All in favor vote aye; opposed vote nay. Voting on the adoption of the Cunningham amendment, AM1736, to LB 13. Have you all voted? Record please, Mr. Clerk.

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CLERK: 33 ayes, 0 nays, Mr. President on the adoption of Senator Cunningham's amendment.

SENATOR CUDABACK: The Cunningham amendment has been adopted.

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 13 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance. We will go for discussion. Senator Beutler. Senator Beutler waives his opportunity, Further discussion? Seeing none, all in favor of advancement to E & R for engrossing say aye. Opposed, nay. LB 13 advances. Mr. Clerk, LB 13A.

CLERK: LB 13A, Senator, no E & R. Senator Landis would move to amend, AM1685. (Legislative Journal page 1743.)

SENATOR CUDABACK: Senator Landis, to open on your motion, AM1685.

SENATOR LANDIS: There's been a revision in the A bill, and it is occasioned by a reworking of the note. There is...let's see. This is AM1685. This is an amendment that allows the money to be spent by LB 13 to also be spent for LB 12, which was amended into LB 13 on General File. I don't believe that the amounts of money change in the bill. But it broadens the authorization for the use of the money. Thank you.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the opening on AM1685 offered by Senator Landis to LB 13A. Open for discussion. Seeing no lights on, Senator Landis, did you wish to close?

SENATOR LANDIS: You will recall that LB 13 is an administrative distinction between the Workers' Compensation Court and the administrator, and that LB 12, which has now been added into

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LB 13, is the use of the Attorney General's Office as an enforcement tool. The administrator brings the facts to the Attorney General, the Attorney General brings the case, and it goes back to the Workers' Compensation Court, thereby building a wall between the administrative function and the judicial function in the Workers' Comp Court. And that's what we were getting at at LB 12 and LB 13. This allows the money to be spent for those purposes. I ask for its adoption.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the closing on the Landis amendment, AM1685, to LB 13A All in favor of the amendment vote aye; those opposed vote nay. The question before the body is the Landis amendment to LB 13A. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of the amendment.

SENATOR CUDABACK: The amendment has been adopted.

CLERK: Nothing further on the bill.

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 13A to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 13A to E & R for engrossing. All in favor say aye. Open for discussion. Seeing none, opposed, nay. It is advanced. We now go to LB 465, Mr. Clerk.

CLERK: LB 465, no E & R. Senator Mines, I have AM1700, but with a note that you wanted to withdraw AM1700, Senator.

SENATOR CUDABACK: Senator Mines?

SENATOR MINES: Yes, Mr. Clerk, I'd like to withdraw AM1700 and introduce AM1752.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk, please?

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LB 151, 465

CLERK: Senator Mines would move to amend with AM1752.
(Legislative Journal pages 1823-1826.)

SENATOR CUDABACK: Senator Mines, to open on AM1752 to LB 465.

SENATOR MINES: Thank you, Mr. President. If I could do a little background, AM1700 was introduced, and I will explain what that is. But AM1752 replaces that amendment, and the reason for AM1752 is, we were asked by a bill drafter to include a technical amendment that would include, on page 2 of AM1752, line 8, would include the provisions of Section 223 of the Internal Revenue Code. So it references the Internal Revenue Code, as far as charter banks and laws in Nebraska. The amendment, the underlying amendment, AM1700, came from LB 151, and Senator Redfield's bill would protect those monies in a life insurance holding, and I introduced LB 151, that would protect medical savings accounts when people file bankruptcy, protect those, and declare them not an asset that could be attached, but rather it's a medical savings account and should remain that way. It grants the exemption from claims of creditors pursuant to garnishment order, bankruptcy, or other actions. So it fits very nicely with Senator Redfield's bill. It would allow an individual who files for bankruptcy to not have the funds in their account attached. And I think that's fair and reasonable, and I would ask for the passage of AM1752. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the opening on the Mines amendment, AM1752. Open for discussion. Senator Beutler.

SENATOR BEUTLER: Senator Mines, I don't know a whole lot about medical savings accounts or health savings accounts, but my questions are these. And let me give you a little background so you understand the nature of my question. Senator Redfield and I had some extended discussions last year and this year about exempting these different things from bankruptcy. In her case, it was essentially things that could be regarded as types of retirement accounts, and the argument on one side was, well, we need to allow them some retirement. And the argument on the

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other side was, if you exempt it from bankruptcy, you're cheating other people out of their rightful money--small business people and others. And eventually, at least for myself, I agreed with Senator Redfield that the amount that is exempted should be raised somewhat. However, I perceive that part of what we do is make it possible for people who are wealthy to have different kinds of accounts, and to look ahead and avoid some of the consequences that people who are less wealthy can never avoid; some of the consequences of bankruptcy, for example. But let me ask you these questions. With respect to a health savings account and a medical savings account, how much can you put into these kinds of accounts?

SENATOR CUDABACK: Senator Mines?

SENATOR MINES: Thank you, Mr. President. I don't believe that there is a cap on the amount that you can contribute, but I could...I don't know, Senator. I'm sorry, but I can find out.

SENATOR BEUTLER: Okay. And the second question is, what happens to the amounts that you don't use in that account? Let's say, if I don't use it for medical purposes, and I turn around and use it for another purpose, I can do that, but I'm fined, to some extent? Is that what happens?

SENATOR MINES: As I understand it, they can only be used for medical purposes. What I couldn't answer is what happens if there is a balance left at the end and you die. I can't answer that part, but monies in that account can only be used for medical purposes.

SENATOR BEUTLER: Well, I don't want to create as a by-product of something like this a mechanism by which somebody can load in...

SENATOR MINES: Um-hum.

SENATOR BEUTLER: ...a whole lot of money and call it this kind of account, then, for example, die and that money escapes...or that money might escape bankruptcy, by virtue of simply having put a lot of money into it. I mean, there have to be some

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limitations here, it would seem to me.

SENATOR MINES: I would agree with that, and that's why I couldn't answer how much might be left if you die. And I see that your account limit would be \$25,000. I don't know if that's the right number or wrong number, but it's a number.

SENATOR BEUTLER: Senator, that's my problem. I don't know exactly what the right number was...what the right number is, but...and I don't know enough about the accounts to know if it's even necessary. But my dilemma is, I don't want to let the bill pass, if we're creating another gap in the law that allows for exempting more funds than, in some people's opinion, might (inaudible).

SENATOR MINES: I would agree with you and would support your amendment.

SENATOR BEUTLER: Okay. Well, let's proceed with the amendment on that basis.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: And if we find out it's inappropriate for some reason, I'm certainly open to coming back and taking a look at it.

SENATOR CUDABACK: Thank you, Senator Beutler. Mr. Clerk, please, a motion.

CLERK: Senator Beutler would move to amend. (FA309, Legislative Journal page 1826.)

SENATOR CUDABACK: Senator Beutler, to open on your amendment to AM1752.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, what the amendments do is to put a \$25,000 cap on the amount that would be exempted from bankruptcy and from levy, and from those mechanisms that allow assets to be seized to enforce judgments and to be taken into bankruptcy. So that at least

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puts a cap on it. As you heard from the discussion, nobody is quite sure about how these accounts operate, and whether this cap is absolutely necessary, but in any event, there would be a cap of \$25,000. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the opening on FA309. Open for discussion. Senator Redfield.

SENATOR REDFIELD: Thank you, Mr. President, members of the body. Senator Beutler, you wanted to know if there were limits. There are, in fact, limits. Under the health savings plans, according to the Congress plan, the limit is \$4,500 a year contribution. And under medical savings plans, it is 65 percent of the taxpayer's insurance deductible, if it's a single plan; if it's a family plan, it may be equivalent to 75 percent of their insurance deductible. So we're not generally talking about a large number of dollars each year. I will tell you, on our medical savings plan, any unused balance that is not used for medical expenses does go back. You lose it. So most people do not put more money into these plans than they feel that they can use for their deductibles and other medical expenses, such as eyeglasses, contact lens, dental plans, et cetera. A health savings plan actually is a different breed. It does allow people to maintain that account and carry it over from year to year, so that, in fact, if you have a larger expense in a following year, you can use that. And the goal is that people will actually save some money, so that when they get into their later years and expenses for medicine and doctors and hospitalization may incur a great deal of out-of-pocket expense, that they would have that wherewithal to continue with that. I absolutely support your amendment, and perhaps the Banking and Insurance Committee could study that over the interim and see if we need to go lower with that next year. But we're not talking about large dollar amounts on an annual basis. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Further discussion on the Beutler amendment to the Mines amendment? Seeing no lights on, Senator Beutler, you are recognized to close.

SENATOR BEUTLER: Senator Cudaback, I like the idea of studying

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it. It sounds like the cap may be very appropriate for the one, and less appropriate for the other, but not inappropriate for either. So I would recommend to you the \$25,000 cap, and then we can go from there. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. You've heard the closing on FA309 to the Mines amendment. All in favor of the adoption of the Beutler amendment vote aye; those opposed vote nay. The question before the body is the Beutler amendment, FA309, to the Mines amendment to LB 465. Have you all voted on the Beutler amendment who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of Senator Beutler's amendment.

SENATOR CUDABACK: The Beutler amendment has been adopted. Anything further on the Mines amendment, Mr. Clerk?

CLERK: Nothing further.

SENATOR CUDABACK: Senator Mines, there are no lights on. You are recognized to close. Senator Mines waives closing. The question before the body is the adoption of the Mines amendment, AM1752, to LB 465. All in favor vote aye; opposed vote nay. The question before the body is the Mines amendment, AM1752, which is an amendment to LB 465. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator Mines' amendment.

SENATOR CUDABACK: The Mines has been adopted.

CLERK: I have nothing further on the bill.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 465 to E & R for engrossing.

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SENATOR CUDABACK: You've heard the motion to advance LB 465 to E & R for engrossing. Open for discussion. All those for say aye; opposed, nay. It is advanced. Mr. Clerk, LB 761.

CLERK: Senator Flood, I have Enrollment and Review amendments. (AM7107, Legislative Journal page 1779.)

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 761.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 761. All in favor say aye. Opposed, nay. The E & R amendments are adopted.

CLERK: I have nothing further on that bill, Senator.

SENATOR CUDABACK: Senator Flood, please, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 761 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 761 to E & R for engrossing. All in favor say aye. Open for discussion. All those opposed, nay. It is advanced. Mr. Clerk, LB 761A.

CLERK: LB 761A, I have no amendments to the bill, Senator.

SENATOR CUDABACK: Senator Flood?

SENATOR FLOOD: Mr. President, I move the advancement of LB 761A to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 761A to E & R for engrossing. All in favor say aye. Opposed, nay. LB 761A is advanced. We now go to LB 227, Mr. Clerk.

CLERK: LB 227 has Enrollment and Review amendments, first of all, Senator. (AM7108, Legislative Journal page 1780.)

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SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 227.

SENATOR CUDABACK: You've heard the motion by Senator Flood to adopt the E & R amendments to LB 227. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Senator Schrock would move to amend with AM1712. (Legislative Journal pages 1826-1828.)

SENATOR CUDABACK: Senator Schrock, to open on AM1712 to LB 227.

SENATOR SCHROCK: Mr. President, members of the Legislature, this amendment clarifies that the definition of "veteran," for purposes of hunting and fishing licenses, so that any veteran, regardless of whether that veteran served in wartime, who is disabled while in the service of his or her country, will be eligible to receive a free hunting and fishing license. This provision was omitted from LB 162, which was passed by the Legislature and signed by the Governor on March 9 of this year. So what this does, it clarifies and says that if a veteran is disabled, regardless of whether in wartime or not, they will receive a free hunting and fishing license. If not for this amendment, then that veteran would have to pay, if they were injured outside of a wartime activity. I would ask for your consideration on this amendment. If you need further explanation, I will try and do that. Thank you.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the opening on AM1712 to LB 227. Open for discussion. Senator Schrock, there are no lights on. Do you wish to close?

SENATOR SCHROCK: Just like to thank Senator Loudon for allowing me to place this amendment, and I appreciate your support.

SENATOR CUDABACK: Thank you, Senator Schrock. You've heard the closing on AM1712. All in favor of adoption of AM1712 vote aye; those opposed vote nay. I'm sorry, this is a board vote. Have

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you all voted who care to? Record please, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Schrock's amendment.

SENATOR CUDABACK: The Schrock amendment has been adopted.

CLERK: I have nothing further on the bill.

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 227 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 227 to E & R for engrossing. All in favor say aye. Opposed, nay. LB 227 is advanced. Mr. Clerk, LB 256, please.

CLERK: LB 256, Mr. President, is...I do have Enrollment and Review. (AM7110, Legislative Journal page 1783.)

SENATOR CUDABACK: Senator Flood?

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 256.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 256. All in favor say aye. Opposed, nay. The E & R amendments are adopted.

CLERK: Senator Price would move to amend, AM1751. (Legislative Journal pages 1828-1829.)

SENATOR CUDABACK: Senator Price, to open on AM1751 to LB 256.

SENATOR PRICE: Mr. President and members of the body, this amendment, AM1751, it would be amended to this bill. It's a very short bill that simply exempts the practice of airbrush tanning and airbrush tattooing from the Cosmetology Act. Both of these procedures involve a temporary nonpermanent application of color to the surface of the skin. This issue was brought to

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me by an Omaha beauty salon owner who had been told by Health and Human Services that her licensed nail technicians could not practice airbrush tanning and temporary tattooing without holding a cosmetology license. The definition of cosmetics in the Cosmetology Act has been broadly read by Health and Human Services, to include airbrush tanning and temporary tattooing. This bill simply clarifies that these practices were not intended to be included in the Cosmetology Act. The applications involved do not include any toxic chemicals or permanent coloring of the skin. Nail technicians have traditionally applied these procedures before the act, and are now losing revenue because they are not able to practice in these areas. This is noninvasive; it's just a temporary coloring of the skin. I hope you will see the simplicity and importance of this measure and vote for this amendment. I would be willing to answer any questions that you may have.

SENATOR CUDABACK: Thank you, Senator Price. You've heard the opening on AM1751, offered by Senator Price. Open for discussion. Seeing no lights on, Senator Price, you are recognized to close.

SENATOR PRICE: I'll waive closing, and I urge your support of this amendment. Thank you.

SENATOR CUDABACK: The question before the body is the adoption of the Price amendment, AM1751 to LB 256. All in favor vote aye; opposed vote nay. Voting on AM1751, offered by Senator Price. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of Senator Price's amendment.

SENATOR CUDABACK: The Price amendment has been adopted.

CLERK: I have nothing further on the bill.

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 256

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to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance. Open for discussion. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. As the President was going through the bill, I noticed Senator Stuhr had tried to turn her light on prior to the bill going across. I think she had something she wanted to say regarding that amendment, and we didn't get that. I was going to actually ask Senator Stuhr a question regarding the amendment we just adopted, if Senator Stuhr would yield.

SENATOR CUDABACK: But your light came on after I had said the close, so I'm sorry, but that's the way the rules state. Senator Stuhr.

SENATOR BOURNE: Senator Stuhr, I yield the balance of my time to you, as I saw that you tried to speak on the earlier amendment and didn't get a chance to do so. So with that, I would yield my time to Senator Stuhr.

SENATOR CUDABACK: Senator Stuhr, you may speak, if you care to.

SENATOR STUHR: Thank you, Mr. President and members of the body. I did want to address a couple of questions to Senator Price in regards to this amendment. Did this amendment get passed out of Health and Human Services, out of that committee?

SENATOR PRICE: Yes, it did. It came out unanimously, with no opposition.

SENATOR STUHR: Okay. And what was the primary...you said it was a misinformation, or it didn't get...it wasn't included in the Cosmetology Act. Could you go through that a little bit for me, please?

SENATOR PRICE: Yes. According to the information that I received from the Omaha salon, is that this...they could not practice airbrush tanning and temporary tattooing without holding a cosmetology license, and this is included in the

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Cosmetology Act, so they do not need to have a separate license. This is under the umbrella of the Cosmetology Act, and if they have a license, they are able to practice airbrush tanning and temporary tattooing, as it stands now. It just wasn't listed in the Cosmetology Act.

SENATOR STUHR: Are you sure that it was unintentionally left out, or are there certain requirements that have to be met? See, I'm not really quite clear. There seems to be some misinformation or...that's why I did not vote on the amendment, because I wasn't really clear if...on the status of it.

SENATOR PRICE: According to staff here, Senator Stuhr, this bill, this amendment, exempts airbrush tanning from the act.

SENATOR STUHR: Right. I know what the amendment does, but I'm just wondering why.

SENATOR PRICE: You're wondering how it came to be.

SENATOR STUHR: Yes. I am wondering if there was just someone, one or two people that came and asked for this exemption. See, I'm not sure that this wasn't intentionally...that's my concern.

SENATOR PRICE: The nail technicians do not have to have a license to do this, and Health and Human Services had felt that it needed to be licensed and under the Cosmetology Act. Oh, I'm...just a minute.

SENATOR STUHR: Senator Price. Yes.

SENATOR PRICE: Okay. It's getting deeper. The nail technicians do not need a license to do this, and Health and Human Services...

SENATOR CUDABACK: One minute.

SENATOR PRICE: ...and Health and Human Services said you needed a cosmetology license to do this. And so this can be done by the nail technicians.

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SENATOR STUHR: Okay, well, my concern is that now we are eliminating that license and standards by your amendment that we just passed. Isn't that correct?

SENATOR PRICE: Yes.

SENATOR STUHR: That now, they are no longer going to need any kind of license to be able to do this.

SENATOR PRICE: The persons that do the nail technician work, the nails, will still continue to have a license, but they won't need a license for airbrush tanning and temporary tattooing.

SENATOR STUHR: Okay. All right. I think that, you know, possibly we rushed into the amendment, but that...we already passed the amendment, so I am just...

SENATOR CUDABACK: Time, Senator Stuhr.

SENATOR STUHR: Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr.

SENATOR STUHR: Thank you, Mr. President.

SENATOR CUDABACK: Further discussion? Further discussion? Seeing no lights on, the motion before the body is the advancement of LB 256 to E & R for engrossing. All in favor say aye. All those opposed say nay. It is advanced. Mr. Clerk, LB 256A.

CLERK: LB 256A, Senator Flood, I have no amendments to the bill.

SENATOR CUDABACK: Senator Flood, a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 256A to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 256A to E & R for engrossing. All in favor say aye. Open for

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discussion. All those opposed say nay. LB 256A is
advanced. Mr. Clerk, LB 693.

CLERK: LB 693, Senator, I do have Enrollment and Review
amendments. (AM7113, Legislative Journal page 1783.)

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R
amendments to LB 693.

SENATOR CUDABACK: You've heard the motion to adopt the E & R
amendments. All in favor say aye. Thank you. All opposed,
nay. They are adopted.

CLERK: Senator Beutler would move to amend.

SENATOR CUDABACK: Senator Beutler, to open on your amendment.
Is Senator Beutler on the...?

CLERK: I have nothing further on this bill, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Speaker (sic). Senator Flood,
for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 693
to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 693 to
E & R for engrossing. All in favor say aye. Opposed, nay.
LB 693 is advanced. We now go to LB 557, Mr. Clerk.

CLERK: LB 557, Senator, I have E & R amendments to the bill.
(AM7111, Legislative Journal page 1784.)

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R
amendments to LB 557.

SENATOR CUDABACK: The motion is to adopt the E & R amendments

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to LB 557. All in favor of that motion say aye. Opposed, nay. They are adopted.

CLERK: I have nothing further on LB 557, Senator.

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 557 to E & R for engrossing.

SENATOR CUDABACK: The motion to advance LB 557 to E & R for engrossing, say aye. Open for discussion. All opposed, nay. It is advanced. Mr. Clerk, LB 573.

CLERK: LB 573, Senator, I have Enrollment and Review amendments. (AM7114, Legislative Journal page 1785.)

SENATOR CUDABACK: Senator Flood, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 573.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 573. All in favor of that motion say aye. Opposed to the motion say nay. E & R amendments are adopted to LB 573.

CLERK: I have nothing further on LB 573, Senator.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 573 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 573 to E & R for engrossing. All in favor say aye. Open for discussion. All those opposed, nay. It is advanced. We now go to the last bill of the 30-minute divisions, LB 343.

CLERK: I have Enrollment and Review amendments, Senator. (AM7109, Legislative Journal page 1789.)

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SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 343.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 343. Say aye. Opposed to the motion, nay. The E & R amendments are adopted.

CLERK: I have nothing further pending to LB 343, Senator.

SENATOR CUDABACK: Senator Flood, for a motion on LB 343.

SENATOR FLOOD: Mr. President, I move the advancement of LB 343 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 343 to E & R for engrossing. All in favor of the motion say aye. Open for discussion. All those opposed, nay. LB 343 is advanced. That completes that segment of the agenda. We now go to Select File 2005, Senator priority bills, the Jensen division. Mr. Clerk, when you get time, LB 70.

CLERK: Mr. President, LB 70 has been discussed on Select File. When the Legislature left the issue Senator Jensen had pending AM1153, and AM1613 as an amendment to AM1153. So those currently are the matters before the Legislature, Mr. President.

SENATOR CUDABACK: We now go to discussion, AM1153, Senator Smith.

SENATOR SMITH: Thank you, Mr. President. With the agreement of the body, it is my desire that we address AM1739, but I know that Senator Jensen would have to, I believe, pull AM1153.

SENATOR CUDABACK: Senator Smith, restate what you said. I did not hear you.

SENATOR SMITH: Mr. President, I apologize here. I believe...well, I'll just start speaking to the issue at hand,

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and that is that we have worked quite some time on a compromise that involves LB 70, the premises within LB 70, and actually, now, some other issues that have been brought into LB 70 as well. And that...you'll find a handout at your desks that talk about the compromise. There's the commission that includes 12 members appointed by the Chairs of Transportation and Health Committees. They would perform a study that would terminate on December 1, 2006. We would beef up the training that has been promised in LB 70, all the way along through the increased fee, \$5 per registration, and then there would be the mandatory safety course for new Class M licenses, beginning on September 1, 2007. This would allow the Department of Motor Vehicles to ramp up the training, using the increased fees, and allow the infrastructure to be enhanced so that there would be fewer waiting lists--hopefully, no waiting lists at all--for the training course. Then there would be the two-year relaxation period of the helmet law, and although there would still be the necessary eye protection, age requirements, and then the training and/or experience. And then you'll see in the handout some other details, but I believe that that is the thrust of the compromise to LB 70, and I hope we can get the logistics worked out of which amendment needs to take place and when. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. I filed AM1613 to AM1153, and that's where we last left off, and there was...we left off hoping that perhaps we could reach some sort of a compromise. While I certainly have a great deal of trouble in supporting LB 70, or going away from the helmets, with the will of the body, it appeared that certainly LB 70 was going to pass, and so I began to negotiate with Senator Smith, and I appreciate the fact that he has given time and consideration towards this. And even though I probably still will not vote for LB 70, I do believe that we have come together on a compromise with an amendment. So with that, I will pull AM1613, or ask that AM1613 be withdrawn, so that we can then take up Senator Smith's amendment. So with that, Mr. Chairman, I would ask to withdraw AM1613.

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SENATOR CUDABACK: AM1613 is withdrawn. Mr. Clerk, please?

CLERK: Well, Senator, may I inquire as to your intent with respect to AM1153? I mean, I've got lots of amendments here, so I'm...

SENATOR JENSEN: Yes, Mr. Clerk, AM1153 will stay in place. I believe Senator Smith's amendment is still to AM1153. I'm sorry. We were on...

CLERK: Okay, I see where we're at, I think. Okay.

SENATOR JENSEN: If I'm correct, I believe the...when we left off, AM1613 was an amendment to AM1153. Am I correct, Mr. Clerk?

CLERK: Yes, sir, you are.

SENATOR JENSEN: Okay. So with that, I would ask that we withdraw AM1613.

SENATOR CUDABACK: It is withdrawn.

CLERK: Mr. President, in that case, Senator Smith, I now have AM1670.

SENATOR CUDABACK: Senator Smith, did you wish to go to...

CLERK: That's not your last one, Senator, just so you know.

SENATOR SMITH: Mr. Clerk, wouldn't that be AM1664?

CLERK: Well, I'm sorry, you're right, AM1664 is the first one.

SENATOR SMITH: And I would respectfully ask to withdraw that.

SENATOR CUDABACK: It is withdrawn.

CLERK: Senator Smith, AM1670.

SENATOR CUDABACK: Now we go to AM1670, Senator Smith.

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SENATOR SMITH: Withdraw, please.

SENATOR CUDABACK: It is withdrawn also.

CLERK: Senator Smith, AM1739. (Legislative Journal page 1789.)

SENATOR CUDABACK: You're recognized to open on AM1739 to AM1153.

SENATOR SMITH: Thank you, Mr. President, members. AM1739 is the magic number, and that is the compromise that I explained earlier, that involves the two-year relaxation of the helmet law, and then after those two years, though, there would be the increased requirements on the safety training, but the infrastructure would then be in place over these next two years, to support that training. And I truly believe that the enhanced training will do far more to save lives and prevent injuries of Nebraskans than our current policy of: wear a helmet, it can even be somewhat of an old-fashioned helmet, and you're okay. To me, that is a policy that is problematic in several ways, but primarily it creates a false sense of safety, and I think that we as state policymakers need to be mindful of that, and we can come up with a policy. I appreciate Senator Jensen's time on this. I truly appreciate Senator Beutler's willingness to be a go-between here on the issue, and I appreciate his objectivity on the whole issue. I urge the adoption of AM1739 to Senator Jensen's AM1153 as a compromise, and we can move forward, hopefully, with an affirmative vote of LB 70. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. You've heard the opening on the Smith amendment, AM1739, which is an amendment to the Jensen AM1153 to LB 70. Open for discussion on the Smith amendment. Senator Chambers, followed by Senator Schimek and six others. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I've come to respect special effects. (Motorcycle revving) Somebody said that's the worst they heard. They don't even know what I was imitating. (Laughter) Mr. President, this amendment

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is a hodgepodge of this, that, and the other. I see Senator Erdman is in his seat. I would like to ask Senator Erdman a question.

SENATOR CUDABACK: Senator Erdman, would you respond to a question?

SENATOR CHAMBERS: Senator Erdman, you're sitting where a man whom I had dubbed "The Baron" used to sit, and I could ask him questions like this, so I hope it doesn't tax your ability, and I don't believe it will. Can you finish this old axiom: Too many cooks...

SENATOR ERDMAN: Spoil the broth? Spoil the soup?

SENATOR CHAMBERS: Thank you, Senator Erdman. Thank you. Members of the Legislature, it seems that what they did...don't you all panic. Somebody told me that I was being talked to when it thundered, and I told them, no, I'm a ventriloquist, I'm throwing my voice. Mr. President, it's like having 10 people and each one said, well, I've got to have this; the other said, I've got to have that; and when they put it all together, they came up with something like this amendment, where if you look at it in its totality, it's worse than nothing. This amendment is worse than if you repeal the helmet law outright. It's worse than if you leave it in its present form. It is neither fish nor fowl. Consider all of these provisos that will allow a person not to wear a helmet, not to wear it under certain circumstances. If you have on eyeglasses they can't bother you, but if you don't have eyeglasses or these other types of eye protections, then that is a primary offense and you can be stopped. Anybody with two brain cells working together will put on eyeglasses. I don't see any definition or description even of the eyeglasses, except to say that they cover the orbital region of a person's face, which means your eyes. Why a person would want to wear glass instead of some unbreakable substance is beyond me, but I don't ride motorcycles, and I don't have the mentality that it takes. How many officers are going to stop somebody to see if they are over a certain age, if they can prove they've taken a safety test, all of these other things? This bill creates a set of circumstances where a violation that

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is occurring is not apparent to the naked eye. For all I know, there could be "Psychic Friends" training that all the police officers have to take, but I'm not aware that that's a requirement. So unless they have some kind of ESP or special training to read into people's minds, or read their minds and see what's going on in their minds, and know these other things that they cannot see with their eyes, this bill will produce a law which is virtually unenforceable. You are repealing through indirection what you will not repeal directly. This would be one of the worst possible pieces of legislation on this subject that the Legislature could enact.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: If a layperson were to read it, he or she would not know whether he or she was coming or going, and if so, wouldn't know where he or she was going, or from whence he or she had come. I'm going to listen to the discussion, but it seems to me that people are saying, if not wearing helmets causes people in accidents to either be killed or suffer great brain damage, you're willing to suspend that conviction for two years, and let the deaths and brain damage occur. For what reason, I do not know. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of AM1739. Senator Schimek, followed by Senator Smith and about eight others. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I haven't spoken a great deal on this, but I share some of the same concerns that Senator Chambers does. I'm really all for a study. I think that's a good idea, and I thank Senator Jensen and others for working on that aspect of it. But what I cannot support and will not support is the doing away with the helmet law for a two-year period. I think it is foolhardy to do that without any data to let us know that this is a very good idea. One of the things that I got today in the mail was a letter from the National Safety Council of Omaha, and they mentioned several points in that letter that I would like to discuss with Senator Smith for a minute or two, if I might, Mr. President.

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SENATOR CUDABACK: Senator Smith, would you yield to Senator Schimek?

SENATOR SMITH: Yes.

SENATOR SCHIMEK: Senator Smith, I just want to clarify for the record, the letter from this group that I just mentioned, the Nebraska...or the National Safety Council of Omaha, says that the commission that's going to study the issue will be unbalanced. I'm sure you saw the letter, right?

SENATOR SMITH: Yes.

SENATOR SCHIMEK: And it mentioned the fact that you have indicated that you are going to serve on this commission. Is that correct?

SENATOR SMITH: No, it isn't.

SENATOR SCHIMEK: Have you...you don't have any interest in doing that?

SENATOR SMITH: No, I...my hands are kind of full for the next several months. (Laugh)

SENATOR SCHIMEK: I suspected that might be true, but I just wanted to clarify that for the record.

SENATOR SMITH: I am not adamant that I serve on that. The composition of the commission was not of my making. That was Senator Jensen's making.

SENATOR SCHIMEK: Right.

SENATOR SMITH: And I just had a conversation with the writer of the letter, to try to clarify that. And it was interesting that I had a meeting with some folks who were involved in motorcycle training, and coincidentally, this individual who wrote the letter was present at that meeting. He did not disclose his extra affiliation with the...

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SENATOR SCHIMEK: Can we be a little more succinct?

SENATOR SMITH: Okay.

SENATOR SCHIMEK: Because I want to go on to another point or two, Senator Smith.

SENATOR SMITH: Okay, well, what I'm saying is that I think there was a rush to criticize...

SENATOR SCHIMEK: Okay.

SENATOR SMITH: ...without truly going through the rationale, and that's been consistent all the way along, and that happens in this business.

SENATOR SCHIMEK: Okay. Could we then go to the second point?

SENATOR SMITH: Okay.

SENATOR SCHIMEK: Because you have clarified that for me. The second point that I wanted to discuss is that there is no baseline study in place with which to make comparisons using Nebraska data. Is that a valid criticism, do you think?

SENATOR SMITH: Well, that is why I was insistent on having more than a 30-day relaxation of the helmet law. That was the original proposal, in terms of a "compromise." I mean, that wouldn't have provided any good baseline data.

SENATOR SCHIMEK: But why should we get rid of something that, truthfully, is working, to do something that we don't know what its implications are going to be, without the study?

SENATOR SMITH: Senator Schimek, there is disagreement on whether or not the helmet law is working as it is currently...

SENATOR SCHIMEK: Oh, I...

SENATOR SMITH: I realize you're comfortable with that; I'm not, and there's...

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SENATOR SCHIMEK: Yes, I am. Okay.

SENATOR SMITH: ...there's kind of a split opinion here.

SENATOR SCHIMEK: Third point, then, is the point about the economic development. And you know, they do make a point here--I'm sure you could make the other point, too--but that the events like Rolling Thunder, for instance, that take place in Washington, D.C., that happens to be a full helmet law state, or...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...geographic area, and that only a scholarly study will tell us if helmet sense or geography or individuals' vacation time, or the placement of interstate highways have an impact on tourists flowing to Sturgis. You know, I can't imagine that that many people are going to be coming through Nebraska to go to Sturgis. Well, maybe they will. But is that a valid...do you think that's a valid criticism, that the argument is not very well made, when we see other states with full helmet laws being successful in attracting tourists?

SENATOR SMITH: Well, we just had a large motorcycle event in Scottsbluff. (Thunder) Was that the rolling thunder you were speaking of?

SENATOR SCHIMEK: That's it. (Laugh)

SENATOR SMITH: Okay. That we had over the weekend...

SENATOR CUDABACK: Time. It's now your time, Senator Smith.

SENATOR SMITH: My time?

SENATOR CUDABACK: It's now your time.

SENATOR SMITH: Okay. And I'd be happy to continue to address that. We're not talking about single events here, because they are less prevalent here than in other states without as

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restrictive of a helmet law. And so, I'm getting a lot out of this bill with a two-year relaxation, but I thought, in the interest of beefing up the safety course, I think we can be prepared, using the safety course, to say, why is it that Iowa has a more optimal fatality rate than we do? And I would suggest it's because their safety course is more prevalent, but I don't know that for sure. And that's why I'm not afraid of more information. It's just that if we...we have to take each and every accident, by itself, to study it, Senator Schimek. And...just a second, we're on my time, so I'll try to leave some time for you. But we have to look at each and every accident, because every accident is going to be under different circumstances. We know that just with anecdotal evidence, and we have an opportunity here, I think, to try to make both sides happy--those who seek to restrict and those who want to see more options and choices. I filed this amendment last week. I wanted to make sure that it was filed as soon as possible, so that folks could have the opportunity to look at it. So far, the only critic on the logistics of it is Senator Chambers, but he spoke very favorably about the finer details of the bill, just a few weeks ago. So I would encourage you to look at it with an open mind, and I appreciate the compromise nature of it. I believe that I'm giving up far more than the other side is, because the other side has a sunset date on what they don't like, and I did not insist on a sunset date with some of the safety restrictions. But I would yield at least a sufficient amount of time to Senator Schimek, if she wanted further clarification.

SENATOR CUDABACK: Thank you, Senator Smith. About two...about two...

SENATOR SCHIMEK: I won't take but a minute, or a half a minute, Senator Smith. The only thing I wanted to mention was that I don't believe Iowa did become more safe after the helmet law was passed. In fact, if you look at the periods before the law was passed and after the law was passed, there were many more fatalities and many more head injuries in both of those periods. And I've got...you know, Triple A of Nebraska is the one who sent these statistics. But that's all I wanted to say, so you can have your time back.

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SENATOR SMITH: Okay. Right, and I do want to point out to you that Triple A of Nebraska is the organization that describes or compares an unhelmeted rider to that of a drunk driver. That's Triple A of Nebraska, and their person who they send to the hearings and so forth has said that on multiple occasions. I think that's very unfair. I don't even hear that comparison here in the body. But if you're going to rely on Triple A information, I think you need to look at the full picture. There has been this rush to say anything so that the discrediting of LB 70 can take place, and I believe that the supporters of LB 70, including myself, we've done our homework and we've realized that you need to look into the numbers in more ways than one. And quite honestly, I thought there would be a few more, or a bit more sophisticated arguments against LB 70 than there have been so far. And that's why I'm not afraid of a study. I think a study will provide more sophisticated information, and I hope that it is as objective as possible, and I believe that we can arrive at that. Am I out of time, Mr. President? Do I have any more time, Mr. President?

SENATOR CUDABACK: You have about one minute, Senator.

SENATOR SMITH: Thank you. So I believe that we need to look at that and really look at perhaps each and every accident. There are not that many fatality accidents in Nebraska, and you can look at the conditions. Would a helmet have made any difference? I mean, it does not take a great deal of training to determine that. Or did they have a helmet on anyway, and it didn't matter? But when you look at Iowa, if you take Iowa's current policy and you take Nebraska's current policy, being at basic opposite ends of the regulation spectrum, Iowa has a lower fatality rate than Nebraska. Right there. Other neighboring states of ours without universal helmet laws have more optimal--that meaning lower--fatality rates. The only one significantly higher than Nebraska is Missouri, and they have, like, I think, 50 percent higher number of deaths than Nebraska.

SENATOR CUDABACK: Time, Senator.

SENATOR SMITH: Thank you, Mr. President.

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SENATOR CUDABACK: Thank you, Senator Smith. Senator Mines, followed by Senator Don Pederson and eight others. Senator Mines.

SENATOR MINES: Thank you, Mr. President, colleagues. I was 100 percent for the green copy of the bill, and that may not be what many of you supported, but I support the green copy. And this, in my opinion, has turned into a caricature of what that bill was. As an example, I believe that the motorcyclists that choose not to wear helmets are...should be opposed to this amendment, I feel, because they get helmetless riding for two years, however, they have to wear their helmet because it's a secondary offense. But you could ride without your helmet and not get stopped. They get that. On the other hand, what they don't get is...well, they do get mandatory safety training. And that's something they don't have to do now. They must carry proof of that training, which they don't have to do now. They must wear protective eyewear, which is improperly defined, but...in fact, it's not even defined. So...and they also have to pay an additional fee to cover the training course. It appears that in place of two years of helmetless riding, motorcyclists have to pay more money, they have to take a training class, carry proof of insurance...or proof of training, and they also must wear protective eyewear. So from the standpoint of a supporter of LB 70, not only is this amendment a work of many, I don't think this work is very well put together. It's put together and it's intended to pass, for one reason for another, and I just...I'm really struggling with this. And I have said I would vote for the amendment. I don't like it, for the reasons I've stated. But I've said I would vote for it, and...for whatever that means--I'm talking in circles. I don't like the amendment, but I'm voting for it. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. Senator Don Pederson, followed by Senator Byars.

SENATOR D. PEDERSON: Thank you, Mr. President. The amendment kind of reminds me of a camel, which was once described as having been put together by a committee, and I think this is

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pretty confusing. And if you think that we're going to have to go home in a few days and try and explain to somebody what the helmet law is, I think we're going to be hard pressed to do it. I always appreciate the fact that people attempt to compromise on very serious issues. But I think that this is going to be a very difficult law for law enforcement to enforce, and I appreciate the efforts of this, but I do have some concerns about it. I've always had concerns about the helmet law, and primarily for the same reason that Senator Jensen and others have described, and that is the head injuries that do occur. But I do have a question for Senator Smith. Senator Smith, do I understand from reading this compromise that the finances of this particular effort, as far as the fiscal note would be concerned, is being taken care of by the increase in fees?

SENATOR SMITH: Yes.

SENATOR D. PEDERSON: So are there any other fiscal responsibilities of the state in regard to LB 70?

SENATOR SMITH: Not according to the agencies we've talked to. It's been my concern all along that we implement a feasible and realistic policy, so that DMV is not expected to do something that is outside of the cash fund, basically.

SENATOR D. PEDERSON: Okay, that was my only question. Thank you.

SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: Thank you, Senator Pederson. Senator Byars.

SENATOR BYARS: Thank you, Mr. President. I have to concur with Senator Mines, because even as Senator Mines was interpreting as he read what the amendment was, I was interpreting it a different way. I had made note myself earlier, and was going to do some inquiry relative to, in one place you have the two-year relaxation period if somebody is 21 years of age on or after the operative date of September 1, 2005, but then in the enforcement, it becomes a secondary offense during the two-year relaxation period. Now Senator Mines and I agreed on that. But

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now Senator Mines made the statement, the one good thing that he saw was that there would be mandatory motorcycle safety courses, and in one place it says that, but then in another place it says that if you have a Class M operator's license prior to September 1, 2003, then you don't have to have an approved motorcycle safety course. So I...I guess I was hopeful as negotiations were going on that we could find something that all of us, whether we liked it or disliked it, could feel...at least not go home and not sleep at night, because we had something to work with. I feel very, very uncomfortable with this amendment. I don't think that I can vote for it, and I certainly can't vote for the bill with the amendment. I'm confused. I think the language in the bill is...has conflict after conflict, and I'm very concerned. And I did need to mention, too, Senator Smith has referred to the person, Rose White, from Triple A Nebraska on several occasions as being incredible as she referred to, in the hearings and other times, about drunk drivers and related to motorcyclists. And I want to read to you what Ms. White has at least sent to me, and I hope she has to the rest of the body. She refers to the fact...on another matter, I would like to correct a statement that has been mentioned during floor debate, in an effort to discredit our organization, which is Triple A Nebraska. I have been unjustly accused of making a statement comparing drunk drivers with motorcycle riders. I have a copy of the Transportation Committee hearing transcript for LB 69 and LB 70, prepared by the Clerk of the Legislature. A quick review of the transcript will show that I never mentioned drunk drivers during my testimony, nor did I ever attempt to make any comparison. At the conclusion of my testimony Senator Smith asked me one question: Do you see an unhelmeted rider as much of a danger to society and other drivers, as a drunk driver? My one word response was, no. And she says, a copy of the transcript available upon request. So there obviously is a misunderstanding on what Ms. White said, but I did feel that I needed, as a matter of the record, to put her interpretation of what she said in her testimony during that hearing. At this point, I would be opposed to the amendment and opposed to the bill.

SENATOR CUDABACK: Thank you, Senator Byars. Senator Johnson, your light is next.

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SENATOR JOHNSON: Mr. President, members of the body, does anybody know what is in this bill? Does anybody know what is in this bill? I don't. But then, I don't know as it makes much difference. We're talking about doing a study. There have been innumerable studies presented to this body, all done independently. Certainly the American College of Surgeons trauma committee didn't have LB 70 in mind when they made their study. Louisiana didn't have LB 70 in mind when they did their study. What good will one more study do? The facts have been clearly presented, time after time after time, that there is no controversy. Helmets save lives; they prevent brain injuries, which by the way are the single most devastating injury. It's the single most expensive injury. Why do another study? Every academic, every state study, you go through the list. What we see as proof are little bits here, and little bits here. We're talking in this study that we're going to look at each case individually. You can't do that in small groups. You have to have good numbers before statistics become statistically valid. We said that on the first day of the discussion of this bill. It's still true. I don't know where to go. The statistics are there. I know one thing: When this discussion is over today, I hope that if you're one of the 33 cloture votes, you are sufficiently versed in what you're voting for that you don't have to come up to me afterwards and ask me what we voted for. So I'm against the amendment. I know Senator Jensen and Senator Smith have worked hard and diligently to do this, but there are some things that you just can't fix, and LB 70 is one of them. So I'm going to vote against the amendments, and I hope you will, and I hope you'll also not vote for LB 70. Thank you.

SENATOR JANSSEN: Thank you, Senator Johnson. Senator Beutler.

SENATOR BEUTLER: Senator Janssen, members of the Legislature, it certainly does sound like a compromise amendment. Both sides are continuing to argue both sides of the case. (Laugh) I think we should all remember what happened on General File. There was a cloture vote. And of course, we could go on today again, and push it towards cloture or take up the rest of the session with it. I don't know what would happen. But clearly, there is a split of opinion, and on General File, the balance of

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that opinion was clearly on the side of those who favored getting rid of the helmets, whether that was right or wrong. So what this amendment does, it seems to me, is to offer a true compromise. It allows us to settle this issue for this year. It does say, for two years helmets will be a secondary offense, but that's a huge improvement from what it was before, if you're on the side of folks who thought that the studies indicated that the helmets were protective. And then what happens at the end of two years? At the end of two years, the helmets are back, primary offense, okay? Senator Smith has his education in place. Not only that, but it's well funded--increased fees, and a requirement that we never had before, for eyewear as regulated by the State Patrol, will be required of all motorcyclists. So from the perspective of both sides, I suppose you can consider some losses. But on the other hand, there are gains to both sides. Senator Smith gets his study, Senator Smith gets his breathing period and a couple of economic cycles out there, out west, as the motorcycles go through. Senator Jensen, on the other hand, gets the helmets back in place in two years and some eyewear. And then, of course, we have the study, and we'll all be interested in what the study has to show. But the assumption here is that the study is a study, and we're all going to take a good-faith look at what it might show, and not make assumptions, as we all have up until this point in time, that the studies meant this, to date, or that the studies have meant that. So this may not be a very happy compromise from anybody's point of view, but it gets us out of this quagmire, and it gives credence to some of the arguments that both sides had to make on the floor. I intend to vote for the compromise amendment. Thank you.

SENATOR JANSSEN: Thank you, Senator Beutler. Mr. Clerk, you have some announcements?

CLERK: Mr. President, Enrollment and Review reports LB 645, LB 589, LB 589A to Select File. New resolutions: LR 239, Senator Landis, to be laid over; LR 240 is by Retirement Systems Committee, calling for the committee study. Amendments: Senator Landis, LB 71; Senator Chambers, LB 589; Senator Beutler to LB 693. That's all that I have. (Legislative Journal pages 1830-1833.)

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SENATOR JANSSEN: Thank you, Mr. Clerk. Senator Wehrbein, you're next.

SENATOR WEHRBEIN: Thank you, Mr. President and members. I'm going to be brief, because I don't want to repeat all of the things said. I simply want to have on the record that I'm opposing the amendment, and I will oppose the bill. I'm, too, disturbed, primarily because of the way this law is written. I think it's going to be very hard for law enforcement to determine which ones are going to be grandfathered in, whether they've had training. It's going to be very difficult to know, and so, in essence, they're going to have to pass on a lot of enforcement, because they simply aren't going to know and it isn't going to be worth their time to stop. I have been disappointed from the beginning; I guess it's instinct. I haven't said anything about it, but Senator Smith had made the issue of economic...I don't know what the right...I don't want to misuse...but economic returns, if you will, by allowing increased traffic across the state on motorcycles. It appears to me, by doing it this way, we're making...we're taking a calculated risk--that if we can increase traffic, we will get more economic returns, but in the process, we're providing more risks to riders, or increased traffic, and causing more...when the injuries that will occur, will be more, which will probably be more because of increased ridership, we're going to trade it off against, "but we have increased economic development." That bothers me some. We do that in other things, I'll admit. We take calculated risks. Even if it's rodeos or other things, people get involved in things. I understand that. But this is fairly blatant, in the fact that we want to increase traffic, realizing that there will be more traffic, but I think we're going to have increased injuries in total. Thank you.

SENATOR JANSSEN: Thank you, Senator Wehrbein. Senator Baker, your light is next.

SENATOR BAKER: Thank you, Mr. President, members. Some observations, sitting here listening. I too thought we had a pretty good bill in the green copy, but the process has taken us away from the green copy. And just to get you back to that,

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that said we will have required training if by chance you want to go without a helmet. That's the only option you had. No helmets, you had to take the training course. We're a long ways from that now. And it's not my bill, but I know a lot of hours have been put in on this, trying to get us where we think we might have a compromise. Senator Schimek's observation, "what we have is working," it's not. The two states that have mandatory helmet laws, Missouri and Nebraska, had the highest fatality rates. Those are figures from the National Center for Statistics Analysis. It simply takes the number of traffic...or motorcyclist fatalities, divides it by the number of registered vehicles, and you come up with, Nebraska, 5.20 fatalities per 10,000 registered vehicles; Missouri, 8.22; and the rest of the states are below us. The other states don't have mandatory helmet, but they have training. So to me, that's simple. We need training, and the trade-off, the compromise in all this, was take the training course and then you have that option. Well, we're working toward that goal with the study, and I think that study...someone said, what do we need another study for? But we can't even agree on whose statistics we're going to use, and I think these are creditable. I mean, these are not...these are just facts. These are facts--registered vehicles and fatalities, and you come up with a fatality rate per 10,000 registered vehicles, and the fact is Missouri and Nebraska are the only two states in this Midwest area with a mandatory helmet bill, and we have the two highest fatality rates. Those are facts. You can't dispute them. But we don't have any training. So it's, to me, pretty simple. But if we want to take the process, go through the process of having a task force to tell us what to me is perfectly clear already, we have to incorporate training, and the carrot there was the fact that if you took the training course then you didn't have to wear the helmet. And I know from personal experience that the people in some of these surrounding states have taken the course and still wear their helmets. They've been demonstrated to be effective in preventing some injuries and so on. But we can't seem to get there through the green copy, so we're working around the process and setting up a task force. And I also wanted to address the issue that I think Triple A had raised, that Senator Smith had wanted to be on the task force. That's absolutely incorrect. I don't know where that information came from, but

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Senator Smith and I are both term limited out at the time the task force would report back. But it would be my intention to appoint people that are going to be here after 2006 session. So that was never an issue. Where the Triple A came up with that is beyond me. They never talked to me, and I know that Senator Smith does not want to be on a task force. So all sorts of misinformation out there. I don't feel we can leave the issue alone, because we obviously have problems, one of the highest death rates per 10,000 registered vehicles, and mandatory helmets. Something out there is not working. It's just irresponsible to leave it alone, so I'm going to support the amendment that Senator Smith, Senator Jensen have worked out, and it's better than doing nothing, I guess, is the point. To say let's not do anything is just irresponsible. We can't go that route. So I will support the amendment and support the bill, and I will work with the task force duties that are assigned to Senator Jensen's committee and mine, and get some people appointed to this and get it moving. With that, I would return the balance of my time to the Chair. Thank you, Mr. President.

SENATOR JANSSEN: Thank you, Senator Baker. Mr. Clerk, you have a motion?

ASSISTANT CLERK: Mr. President, priority motion. Senator Chambers has moved to bracket the bill until June 3, 2005.

SENATOR JANSSEN: Senator Chambers, to open on your motion.

SENATOR CHAMBERS: That's a unanimous consent request.

SENATOR JANSSEN: Do I see a unanimous consent? Senator Smith?

SENATOR SMITH: I object.

SENATOR JANSSEN: Senator, do we...

SENATOR CHAMBERS: Then I would move.

SENATOR JANSSEN: Senator Chambers, to open.

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LB 70, 71

SENATOR CHAMBERS: I now move. Mr. President, I was looking at this bill, LB 70. There are things being attempted on LB 71 that I don't like. I picked up LB 71 and it made as much sense about riding motorcycles as LB 70. And LB 71 doesn't deal with motorcycles at all. It didn't matter which one I read. Now there obviously was a disconnect between what is in LB 71 and what is in LB 70. But there is so much internal confusion in LB 70 that it's one of the types of things which should not come out of the Legislature in the form of an enactment. A guy in a pub had looked at this amendment, because it's been around awhile, and his assessment was, there's some things as is, and some things as ain't, and some things as is neither is nor ain't, and this falls somewhere between the last two. And that made more sense than the bill. You know why I'm offering this motion? We are dying the death of a thousand cuts, or taking the body through the water torture. Senator Smith just wants any bill on this subject to pass that has his name on it, anything. This is one of those straw votes that I sometimes give the body the opportunity to cast. I'm serious about the amendment. At the beginning I said I've always been against a motorcycle helmet law. And I've fought against such things in the past. Senator Smith ran into some difficulties and he started making concessions. I told him if he voted for cloture I was going to punish him, and I said that on the floor. So I was against his bill. I have a legitimate reason apart from that to be against this amendment that we're talking about. If people on this floor intend to vote for this amendment and vote for the bill, you should vote against my motion to bracket. But if you're going to carry us through however many hours of debate you want to spend on this, I do not mind. That is my long suit; that is my strong suit. I have done it, and I'll have the opportunity to just sit back and watch you all while the hours away, watch the shadows of night gradually fall, watch you get tired. And you're not going to be fed this evening, so how many of you are going to stay a long time? You're not going to be fed this evening. No free food. So if your belly is growling, you better send your staff to get you a candy bar, or a crust of bread with some butter on it, if you have those things around, or something. But the freebies are out. Now what are you going to do? If you want this preposterous, incoherent amendment, vote against my motion, but expect me to join in the discussion

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and to prolong it. Since this is an amendment to an amendment, I cannot offer an amendment to it. But I can offer other motions, just to take time, because that's all we're going to do. You cannot offer amendments to what you have before you, so that is what we're going to spend the rest of the time on. So since you're just going to be beating your gums, saying the same things over and over, I've got to offer some motions. And I will offer a motion to recommit this monstrosity to committee and see where we go. And I will move to reconsider any vote that we have, other than one to cease debate. But why would you cease debate? You're not going to talk about anything else. Because if you cease debate, and by doing so you adopt this hodgepodge, you have delivered yourselves into my hands, because then it will be a part of the bill, and I can amend it. And I will amend it or attempt to amend it, and see just how long you all want to stay here tonight. The "General" has not seen us go until 11:59. This bill gives the opportunity, and all of the other things behind it, you can forget. You can f-o-r-g-e-t i-t, period. Let me strike that period. Exclamation point, multiplied by three. I will have fun on this bill. How many days do we have left? You've seen what I can do when we've had weeks and months to go. I would like to ask Senator Abbie Cornett a question or two.

SENATOR JANSSEN: Senator Cornett, will you respond?

SENATOR CORNETT: Yes.

SENATOR CHAMBERS: Senator Cornett, because it's too difficult for me to pick out individual portions of this amendment and frame specific questions, in general, from the standpoint of law enforcement--and you're a former law enforcement officer--does this bill pose problems as far as enforcement, in your opinion?

SENATOR CORNETT: Yes.

SENATOR CHAMBERS: And if you could give any examples? And I'm not asking you to go through every aspect of the bill.

SENATOR CORNETT: The primary one is the age of the rider. You're not going to be able, as a law enforcement officer, to

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look at a person from a distance and ascertain the age of the rider of the motorcycle, or whether they've...obviously, or whether they've completed the motorcycle safety course. Those would have to be secondary reasons to the stop, even though they're made primary here.

SENATOR CHAMBERS: So if you were still an officer on duty, you would have these problems in trying to enforce the law, if it took the form of this amendment?

SENATOR CORNETT: Yes.

SENATOR CHAMBERS: Thank you. And those are all the questions that I will ask Senator Cornett, because it would be unfair for me to break the thing down further, because it's unnecessary. I'm critical of law enforcement when they do the wrong thing. But I have also stood on this floor to fight against bills that gave them an impossible task. You should not do by indirection what you will not do by direction, unless you acknowledge that that's what you're trying to do. This amendment would, in effect, repeal the motorcycle helmet bill by rendering it unenforceable. That is not the approach the Legislature should take when it is known in advance that that is what is going to happen. There have been more studies--and this might be an overstatement on my part, but it's to make a point--in this area than probably any other area that relates to the driving of motor vehicles or the wearing of safety restraints or belts or any other apparatus. You should either repeal the motorcycle helmet bill law, or you should leave it alone. This that you're doing is a travesty. Those who support this amendment know that is the case. There are people who will support the amendment who will not support the bill, so we're going to spend a lot of time for nothing. I don't care what we spend the rest of the day doing, because we will be, to use one of Senator Jensen's terms, we will be bonding. And it just happens that this bill is found in the Jensen division. Senator Jensen knows that LB 548...

SENATOR JANSSEN: One minute.

SENATOR CHAMBERS: ...is gone, even though that's not a bill in

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which he has a great interest now. But there are others who wanted to offer an amendment that they thought was of value. LB 577 is gone. LB 373 is gone. LB 116, of Senator Mike Friend's, is gone. LB 594, Senator Kruse's bill, is gone. Now some of you all have been told, don't let Ernie threaten you, stand up to him. I invite you to do it, especially at this stage in the session. Stand up to me and take all of this time, and get rid of everything following this bill. I'm going to have more to say on this, but I'll stop for now, Mr. President, because my time is up. Thank you.

SENATOR JANSSEN: Thank you, Senator Chambers. Those wishing to speak on the bracket motion, Senator Smith.

SENATOR SMITH: Thank you, Mr. President, members. I rise in opposition to the bracket motion. I tend to (microphone malfunction) what Senator Chambers' first remarks were on the issue, and they were very supportive, but I won't dwell on that. I will say that in Pennsylvania they have enacted a similar policy, they've had it for over a year, they've had positive results, and I think that that is worth noting. And I don't know of all of Senator Cornett's law enforcement background, but I'm glad that Senator Chambers is relying on her, at least on this issue, when it supports at least a temporary position. But I do want to address what Senator Byars talked about earlier, and that was some testimony in committee, referencing the transcript. And I will say that there was reference by Ms. White that talked about lowering the blood alcohol--or actually raising the BAC, blood alcohol content limits, and erasing speeding laws on our interstate systems, and she insinuated that that would be similar to relaxing the helmet law. Print, black and white, right here. If she wants to back away from those comments, I hope that she would, and I will certainly accept that, if she wishes to back off from those. But those are just the facts, and I urge the body to look at just the facts. I know that this is an emotional issue. There are other issues, I think, that other members may want to bring into this, and that's certainly at the whim of the body, and they can live with that. If you don't want to live with a compromise, that's your decision. Let's take an up or down vote and move on. I can live with that. I think it's very

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reasonable to look at an up or down vote, so that we can move on. Thank you, Mr. President.

SENATOR JANSSEN: Thank you, Senator Smith. Senator Chambers, your light is on next.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm going to look at the number of votes on this motion. If 25 people vote against the motion, that could mean that Senator Smith has enough votes to adopt his amendment, but it doesn't mean he has enough to advance the bill. So if people are not going to vote for the bill, they shouldn't vote for this motion. What good does it do to vote for the amendment, and then have a lengthy discussion, and then not vote for the bill? However, and nonetheless, and notwithstanding all of these things, I don't know what the meaning of anybody's vote is. All I will know is the number of votes that go up on the board. I don't mind taking my opportunities to speak on this motion, because it's obvious that we're going to be on this bill for a long time this evening. It would be different, in my opinion, if Senator Smith had maintained some of the integrity that could be found in LB 70 in the green copy. Any bill can stand with some tweaking or gentle massaging in order to make it more palatable. But the main thrust of the bill should remain. Either abolish the motorcycle helmet law, or keep it. This certainly does not keep it, and by indirection, it abolishes it. Read through it if you have the stomach and the concentration, and ask yourself, if you were a law person, how you'd go about enforcing these various provisions. How would you even know what the status of an individual riding a motorcycle would be? You can see if one has eyeglasses, perhaps, but from a distance, you may not be able to see that. At any rate, I'm offering this motion and I think it ought to be adopted. If Senator Smith manages to get 33 votes against this motion, that should mean he's on easy street. But maybe there are other provisions in other bills that follow his which some people don't like, so they will help extend the discussion, and we will not get to those bills. I just don't really care one way or the other. But my first responsibility is to be here. If you do not adopt the bracket motion, the amendment that Senator Smith is offering will be discussed until somebody calls the question, and if that motion

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is successful, you will vote to adopt the amendment. If you reject the amendment, then where are we? If you adopt the amendment, I promise you that I will have numerous amendments that I intend to offer, because I'm going to start drafting them. And if I were Senator Smith,...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...I would be resolving in my mind right this minute that I don't care what Chambers says he's going to do, he's not going to back me down, I will drag this whole Legislature through everything that Senator Chambers is going to do, even though I don't support other people's bills. Even though I'm one of the hardest people to get to cooperate with anything, I'm going to get them all to cooperate with me, because I'm Mr. Smith going to Washington. That's what I would be thinking, by George, by Jove, by the Eternal, by the Almighty, and by myself, which is where I might would be if I were in Senator Smith's shoes, which I'm not. But I have another opportunity to speak, I believe, and I will continue. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of the bracket motion. Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President. You know, I have appreciated the discussion and I think what I've appreciated most about the discussion is Senator Beutler's reading of what the amendment does for those who hadn't read it. I think that's been helpful. But as I think about this proposed compromise, I think back to when I was growing up. And it hasn't been that long ago, I recognize. But there was a TV show that we used to watch on a regular basis, called The A-Team. And there was these characters in the A-Team, there was Hannibal, and there was Mr. T, and there was Face, and Murdock, and these guys would get in these unique situations. And there are some similarities to this process, where you get into a situation, you're trying to figure out how to get out of it. And so somehow through this course of the show, this 30 minutes or an hour, I don't remember

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exactly how long it was, but they would always come out and they would somehow get out of the trap that they were in, or they would escape from the warlords or whatever, and at the end, there was this guy, and I swear, he looked a lot like Senator Jensen--his name was Hannibal--and he would always say, I love it when a plan comes together. And as I look at this compromise, I mean, I love it when this compromise, this plan has come together. Because you have Senator Jensen and Senator Beutler and Senator Smith, who were on different sides of the issue, get together and come up with this plan that they thought met some of the concerns, under the idea that something was going to pass and they were trying to find that balance. And so they recognized the situation that they were in and they said, this is the plan that we think will bring us together to accomplish the goal. But they forgot that there were a couple other individuals laying in the weeds that were willing to shoot the process down, and so here we are again. But it's just kind of interesting. You know, we have a proposal here before us. Is it the best proposal? Probably not. That's why it's a compromise, and I think Senator Beutler has pointed that out. Some people have given on both sides. Ultimately, what we do is going to be probably one of those movie-type stories that hopefully Senator Jensen at the end of the day can say, I love it when a plan comes together. I'm going to rise in opposition to Senator Chambers' bracket motion. I think we should vote. I think we should decide where we're at on the underlying amendment. Senator Chambers wants us to do that by a test on his motion. You know, however we do it, vote no on the bracket, vote on the amendment, let's move forward and let's just see what happens. I believe that when there's a good-faith effort made to compromise and come up with a proposal, that that effort should be given some level of credibility. Obviously, if there are individuals that have concerns, that should be recognized, but I do believe that what has gone on here in this process is no different than what has gone on in other legislation this session, where people on varying sides of an issue that have strongly held positions have come to some middle ground in order to accomplish a goal. And you can disagree about what that goal is, but again, I think it's just an interesting part of this process to say, we're going to negotiate in good faith, and at the end of the day, we're going to have others try to scuttle

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the process. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Senator Chambers. And this will be your third time, Senator.

SENATOR CHAMBERS: Yes, Mr. President. Senator Erdman was mentioning how short a time it was ago that he was growing up, and he's right. But in that short a time he forgot how long the program lasted that he was talking about, and I remember how long ago the program occurred, and I remember how long it lasted. But what he said other than that is exactly right. I had never thought about the resemblance between Senator Jensen and the gentleman that Senator Erdman named. But the mere fact that three people from differing points of view come together and give a hodgepodge does not mean the rest of the Legislature has to accept it. I will not accept it, and I believe I'm in a position to stop it. Does that sound arrogant? Makes me no difference. Even though we're at the tail end of the session, I'm still looking at the Legislature as an institution. How in the world could a monstrosity such as this--and I'm talking about the amendment referred to as a compromise--have any realistic chance of garnering 25 votes? What is the likelihood that the Governor, who is running against Tom Osborne--God Junior...now he doesn't think he's Junior; he thinks the other one is Junior, and he better be careful before he makes me angry. But at any rate, Governor Heinemann is going to look at this, and he's going to have people sitting around talking to him. And they're going to say, Governor, if you sign that, you have signed your political death warrant. It won't take Congressman and Governor-Elect or Select Osborne to say anything about it. Everybody who is concerned about safety will come down on you for signing something like this into law. Why, you could not even explain what is in the bill that led you to sign it, because you cannot explain what the bill does. And if you do understand it, and if you do explain it, and knowing what's in it you sign it, they'll say, he is out of his mind, and he ought to be out of the Governor's chair. I'm not going to try to defeat the bill to rescue the Governor. He's a grown man, and he can make his own decisions. But this is a decision that ought to be made by this Legislature. The mere fact that these different people got together tells you nothing except why the

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bill is such a hodgepodge. And I'm not disparaging any of those who worked on it. I'm disparaging the rest of us, if we accept it. I'm going to start drafting my amendments, but I don't know that you're going to adopt this compromise. But if you do, one of the first things you ought to do is look at page 1, where I have drafted an amendment already, which would improve it. It talks, starting in line 7, about a commission which will consist of the following 12 members, to be appointed by the Chairperson of the Transportation and Telecommunications Committee, and the Chairperson of the Health and Human Services Committee. I would insert the words, "acting in concert," so that you don't have each one of them appointing 12 people. They're supposed to work together on selecting these people. Somebody is going to have to make a decision; they can't vote on it, because there are two of them. They will end up in a tie. If they disagree as to which person ought to have one of these slots, how will they resolve it? That's not in the bill. They should have asked Senator Landis to join them, because he would have said, well, you ought to have three, at least.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: The fox and the duck and the humblebee were all at odds, just being three. And then the goose came out the door and stayed the odds by making four. Does that sound nonsensical? If it does, it shows that Shakespeare even has his lapses, because that's where that comes from. I will give my closing when the time comes. You all will vote, and we will see where we go from there. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Chambers, there are no further lights on, so the Chair recognizes you to close on your motion to bracket. Sorry about that.

SENATOR CHAMBERS: Thank you, and I would like to ask for a call of the house.

SENATOR CUDABACK: There has been a request for a call of the house. All in favor of the house going under call vote aye; those opposed vote nay. Record please, Mr. Clerk.

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CLERK: 21 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The motion was successful. The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. The house is under call. All unexcused members please check in. Senator Dwite Pedersen, Senators Jensen, Janssen, Cunningham. Senators Hudkins, Engel, Brashear. Senators Raikes, Schrock, Schimek, Landis. Senator Mines, Senator Thompson, and Senator Bourne, please. Thank you.

SENATOR CHAMBERS: I'll begin talking, Mr. President.

SENATOR CUDABACK: You may.

SENATOR CHAMBERS: How much time do I have remaining?

SENATOR CUDABACK: About 3 minutes and 43 seconds.

SENATOR CHAMBERS: Thank you, that's close enough. What my amendment does--my motion--if adopted, is bracket this bill until June 3, which means it will not be considered again this session. If people are going to vote for the amendment but not vote for the bill, my suggestion would be that they either vote for the bracket or don't vote at all. And the bracket motion will not pass if there are enough "not votings" or enough no votes. That will be an inconclusive vote. The amendment that is pending, the hodgepodge, will at some point be voted on, and I'm telling what I intend to do. It's not a threat, although some people may take it that way, just as if I walked up to you on the street and put a Buntline Special against your nose and said, give me all the money you got in your pocket. That's not a threat, that's a suggestion or a recommendation. (Laughter) So what I'm doing is informing of what I intend to do. This bill, if it becomes...if this amendment becomes the bill, it is such an atrocity that I as a member of the Legislature cannot allow it to pass if I can stop it. And I believe I can stop it, and in the process of stopping it, other bills are going to fall by the wayside, too, and that makes me no difference. We're all

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in this together. How much does a hodgepodge bill like this mean to you? If it were abolishing the helmet law altogether, a principled position could be taken, or at least one that was explainable. This material in this bill is well nigh unintelligible. I don't think police officers would take this language, if it became the law, and puzzle through it and try to figure when they could stop somebody on a motorcycle. They'd just let them all go and point out that the law is so difficult to understand that, I didn't know what I was required to do to enforce it, so I just let everything go. So that would be repealing the motorcycle helmet law by indirection. I don't want to see it repealed by putting something as atrocious as what is in this amendment into the statute books.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: I also believe that the Governor would not sign something like this into law. Maybe he would, but I doubt it. But I don't want to rely on him to do the work that I think we as a Legislature should do. Mr. President, I would like a roll call vote in reverse order.

SENATOR CUDABACK: Thank you.

SENATOR CHAMBERS: By the way, who is not here?

SENATOR CUDABACK: Senator Schrock. I heard he was on his way.

SENATOR CHAMBERS: Well, I trust, but I also verify. So I'd give him a little more time.

SENATOR CUDABACK: We will wait, if you wish. All members are present or accounted for. There's been a request for a roll call vote on the motion to bracket, in reverse order. Mr. Clerk, please call the roll, please, on the question.

CLERK: (Roll call vote taken, Legislative Journal pages 1833-1834.) 14 ayes, 20 nays, Mr. President, on the motion.

SENATOR CUDABACK: The motion was not successful. LB 70 is not

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bracketed. I do raise the call. Back to discussion of AM1739. There are no lights on. Senator Smith, you're recognized...there is a light on. Senator Johnson.

SENATOR JOHNSON: Mr. President, members of the body. Senator Chambers, I can't tell you exactly what study I'm quoting, but I wrote this down in my notes, and you are exactly right as far as youthful riders are concerned. If you have a secondary offense, the police officers will not stop the person, and the study that I remember is that the helmet use by youthful riders decreased down to about the 50 percent level, even though, theoretically, it was mandatory for them--that is, the people under 21--to wear a helmet. So it is a problem for law enforcement. I think Senator Cornett was exactly right, that this is a bill that not only do we in this Chamber not know what we have, but if it's passed as it is, our law enforcement officers will not know, either. So with that, I will return my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Johnson. Senator Smith, you're recognized to close on your amendment.

SENATOR SMITH: Thank you, Mr. President, members. AM1739, as I've indicated before, is a compromise that I know doesn't make everyone happy, probably not even me. But it's something that I can live with, and it is a practical scenario. The amendment was filed several days ago, and there has been ample opportunity for those with an objective opinion to criticize it, raise issues, or otherwise. I appreciate the involvement of several folks, probably too numerous to mention, but there have been...there's actually a few objective minds out there on the issue, and I appreciate their reflection and their feedback along the way. I believe that we can move forward with the adoption of AM1739, so that we can move on. Thank you, Mr. President. I would ask for a call of the house and a roll call vote, in regular order.

SENATOR CUDABACK: There's been a request for a call of the house. All those in favor of the house going under call vote aye; those opposed vote nay. Record please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, to place the house under call.

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SENATOR CUDABACK: The vote is successful. The house is under call. All unexcused members please check in. Unauthorized personnel please leave the floor. The house is under call. Senator Dwite Pedersen, Senator Don Pederson, please, Senator Heidemann, Senator Landis, Senator Synowiecki, and Senator Bourne. The house is under call. Senator Dwite Pedersen and Senator Landis. Senator Dwite Pedersen. All members are present or accounted for. The question before the body is the adoption of AM1739. There has been a request for a roll call vote, regular order, on the question. Mr. Clerk, please call the roll.

CLERK: (Roll call vote taken, Legislative Journal page 1834.) 30 ayes, 11 nays, Mr. President, on the amendment to the amendment.

SENATOR CUDABACK: AM1739 has been adopted to AM1153. I do raise the call. Back to discussion. Senator Smith, followed by Senator Chambers. Senator Smith waives. Senator Chambers.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, since that was a roll call vote, the names of everybody who voted will be a matter of record. I'm going to see how many of those people voted for...who voted for that are going to vote for the bill, if we get to the point of voting for the bill. But I have one amendment up there, which I think you may not have a problem with, and a second one that may give you some difficulty, and a third one that I'm drafting now would do away with this commission altogether. Those provisions such as that creating a commission are the types of things that I would refer to by the word "sop," something just thrown out there to entice somebody to go along with something which has no merit on its own. This bill--and that's what I can call it now, because you've adopted the amendment--is not anything that a person on this floor should be proud of, and nobody has to say he or she is proud. But it is in such unintelligible condition that it is unenforceable. If you know in advance that a piece of legislation is unenforceable, the only reason I can think of that you would support it is that you're doing so as a strategem. You do not like the motorcycle helmet bill, so you

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want to repeal it by indirection. I would like to ask one of the triumvirate who worked to craft this compromise a question. Is Senator Beutler around?

SENATOR CUDABACK: Senator Beutler, are you present? He's not, Senator.

SENATOR CHAMBERS: Oh, okay. What I want to ask Senator Beutler, if he is within the sound of my voice and finds his way back into the Chamber...hi, Chris. (Laugh) He has talked in the past about provisions in the law that are unenforceable, and now he has helped contrive this amendment. Before I go forward I'd like to ask Senator Jensen a question.

SENATOR CUDABACK: Senator Jensen, would you respond?

SENATOR CHAMBERS: Senator Jensen, was Senator Beutler one of the people who helped contrive this amendment that has now become the bill?

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: Okay, I didn't want to put that on him if he hadn't done it. And I see Senator Beutler approaching, so when he gets to his mike, Mr. President, if he would yield to a question or two, I would like to take that opportunity discuss a couple of points with him.

SENATOR CUDABACK: Senator Beutler, would you yield to a question from Senator Chambers?

SENATOR BEUTLER: I would.

SENATOR CHAMBERS: Senator Beutler, I don't want to make any presumptions that would apply to you before I ask you a question. Do you believe this bill is enforceable by police officers, practically speaking?

SENATOR BEUTLER: Senator, I think certain types of enforcement are problematic for a two-year period. And you have to understand that that's opposed to a bill that was problematic

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permanently, before this amendment was attached.

SENATOR CHAMBERS: That answer I cannot quarrel with, but I'm going to try to get one more direct from you. Do you think this bill, in the ordinary course of law enforcement work...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...is enforceable?

SENATOR BEUTLER: I think it's problematic for the two-year period. But at the end of the two-year period, everybody wears a helmet, everybody has to have training, everybody has to wear eyewear.

SENATOR CHAMBERS: Do you think during that two-year period more people will wear helmets than is the case now, or fewer people, if you have an opinion?

SENATOR BEUTLER: Well, my...it would only be a surmise and a guess, but I would guess fewer.

SENATOR CHAMBERS: Do you believe that helmets mitigate the damage suffered by a person who would be in a motorcycle accident?

SENATOR BEUTLER: I personally believe that that's what the evidence shows, but Senator Smith disagrees strongly, as do most of the people in this Legislature. And so...

SENATOR CHAMBERS: But I'm asking...

SENATOR BEUTLER: And the purpose of the study is to reexamine all of that literature and look at it anew.

SENATOR CHAMBERS: But Senator Beutler, I'm asking questions of a man whose intelligence and independence, when it comes to thinking and forming judgments, I respect.

SENATOR CUDABACK: Time, Senator.

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SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Mr. Clerk, motion, please.

CLERK: Mr. President, Senator Chambers would move to amend the amendment with FA315. (Legislative Journal pages 1834-1835.)

SENATOR CUDABACK: Senator Chambers, to open on your amendment to the amendment to LB 70.

SENATOR CHAMBERS: Thank you. Mr. President, this amendment is not difficult, so I'm going to state what it is, then I will resume my conversation with Senator Beutler, if he is of a mind. On page 1...and some of you may be so turned off with this whole thing that you're not going to follow. But if you do, you will see on your gadget...which one are we taking, Mr. President, by number?

SENATOR CUDABACK: FA315, Senator.

SENATOR CHAMBERS: Okay. On page 1, in line 11, after the word "Legislature," I would put the words "acting in concert." This would at least indicate that the two individuals are not to go off in different directions and each appoint 12 people. You say that won't happen? Considering the language that is in this compromise, that could happen. And I'm just going to take my time, because you've given it to me. Beginning in line 7 on page 1, the bill would say, "The commission shall consist of the following twelve members to be appointed by the Chairperson of the Transportation and Telecommunications Committee of the Legislature and the Chairperson of the Health and Human Services Committee of the Legislature," and I would add, "acting in concert." Some of you may feel that the language is not necessary, that they will do it anyway. Well, if they'll do it anyway, there's no harm in putting that into this bill. And if it had occurred to those drafting it to put it there, I think they probably would have done it anyway. But whether it's accepted or not will not cause me to change my attitude toward this bill. The bill is now this amendment, and as the day progresses, I'm going to read some parts of it to put on the record why there is difficulty in enforcing it. Senator Beutler

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was very circumspect and cautious in his language when he answered my question as to whether he believed the bill to be enforceable if it became law. He said it is problematic. That means he knows that it's not enforceable. Maybe the Governor would have signed a bill to repeal the motorcycle helmet law, but I doubt it. He's going to be in a difficult run to hold the seat that he now occupies. He doesn't need anything like this hanging around his political neck. But let's say that he would sign it, if it got to his desk. That just means there's an additional person who lacks the ability to reason, and who has no great concern about the quality of the legislation which winds up on the books in this state. This amendment is very innocuous. Maybe everybody will agree with it, maybe nobody will. But in any case, I'm going to go through this bill, step by painful step. The second amendment that I have is after the order of the first, except that it would authorize the Governor to make these appointments. If the Legislature enacts the bill and the Governor signs it, the Governor should play a part in putting together this commission. My third amendment would strike Section 1, which creates the commission. And since I want the record to be clear on what it is that I'm doing, I will read what the section is that I want to strike. I may as well spend the time doing something. And those who might pay attention, and those who are watching us, who will not have the opportunity to read the actual text of this amendment which has become the bill, they will know from my reading what it is. I have read what leads up to the amendment that I'm proposing. I would like to ask Senator Baker a question, if he is here.

SENATOR CUDABACK: Senator Baker, are you available? I do not see him, Senator Chambers.

SENATOR CHAMBERS: Then I will ask Senator Jensen, as the second pillar in the appointing process.

SENATOR CUDABACK: Senator Jensen?

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: Senator Jensen, for the record, you are the Chairperson of the Health and Human Services Committee, correct?

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SENATOR JENSEN: Correct.

SENATOR CHAMBERS: The language, as it is, says that you and the Chairperson of the Transportation and Telecommunications Committee will appoint these 12 people. How do you propose to go about doing that?

SENATOR JENSEN: I would imagine that I would come up with a number, six, and then Senator Baker would come up with six, and we would see if we agreed. And if not, we would continue to talk back and forth until we did come up with an agreement of the names.

SENATOR CHAMBERS: Well, would you each write six names on a piece of paper and trade the names, like people trade information, if they're in an auto collision?

SENATOR JENSEN: Perhaps, or sit down together, and, here are my six things, here's yours. Who do you approve? Who do I approve? And then you have a second choice, third choice.

SENATOR CHAMBERS: Suppose you submitted your list to him, and he fell backwards out of his chair laughing, and couldn't get up off the floor. Would you take that to mean he agreed with your list, or that he perhaps found it problematic?

SENATOR JENSEN: (Laugh) I would say that would indicate to me that he didn't think my names were worthy.

SENATOR CHAMBERS: How would you go about selecting a member from the insurance companies, a representative of the insurance companies? First of all, in order for me to be fair, do you know all the...do the insurance companies have an organization to which all of them belong?

SENATOR JENSEN: There are several organizations that they belong to. There's the Independent Insurance Association, and there are other groups that are...certainly there are lobbyists that fulfill that position. I'm not saying the lobbyist would be an appointee, but...

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SENATOR CHAMBERS: How will you settle on the person who is going to represent all of the insurance companies?

SENATOR JENSEN: I might ask one of those associations to give me a list of half a dozen; I'd pick one.

SENATOR CHAMBERS: Well, suppose you talked to one group, and then the independent insurance persons tell you, we want to make the selection?

SENATOR JENSEN: Well, I would say the bill says that I and Senator Baker make the selection.

SENATOR CHAMBERS: Well, they would want to submit names to you.

SENATOR JENSEN: They can submit names. We'd make the final choice.

SENATOR CHAMBERS: How would you know the qualifications of any one of those people, if there were several on the list? How would you go about finding out their qualifications?

SENATOR JENSEN: If it was somebody that I did not know, I would ask that they submit the qualifications along with the name.

SENATOR CHAMBERS: And you would have the time and you would take the time to go through all of that information on each one of these people?

SENATOR JENSEN: If that's what the bill says to do, I would do that.

SENATOR CHAMBERS: I don't think it says to do that. You said that's what you might would do. Would you have them meet with you and Senator Baker, or would you just talk to them individually?

SENATOR JENSEN: I would probably talk to them individually and then visit with Senator Baker about that.

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SENATOR CHAMBERS: When is the...

SENATOR JENSEN: I'm not opposed to your language, by the way, in your amendment. I think that's good language.

SENATOR CHAMBERS: Okay, well, that eliminates some of what I was looking at as a possible problem, based on the language. When is the first meeting of this commission to take place?

SENATOR JENSEN: I don't believe there's a date in the amendment to say that, or in the bill.

SENATOR CHAMBERS: So when does this bill take effect, if it becomes law?

SENATOR JENSEN: Ninety days after...

SENATOR CUDABACK: One minute.

SENATOR JENSEN: ...the Governor's signature. There is not an E clause.

SENATOR CHAMBERS: Would you look at page 14? Have you got it?

SENATOR JENSEN: I do.

SENATOR CHAMBERS: Would you read lines 22 and 23?

SENATOR JENSEN: Yes. It says, "Since an emergency exists"...oh, okay. The act takes place when passed and approved according to law.

SENATOR CHAMBERS: So...and my time is up. I will continue when I'm recognized. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on FA315, amendment to AM1153, to LB 70. Open for discussion. Senator Smith, followed by Senator Chambers. Senator Smith. Senator Smith waives his opportunity. Senator Chambers, you may continue.

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SENATOR CHAMBERS: Thank you, Mr. President. Senator Jensen?

SENATOR CUDABACK: Senator Jensen, Senator...Senator Jensen, Senator Chambers is wishing to ask you a question.

SENATOR JENSEN: To me?

SENATOR CUDABACK: Yes.

SENATOR CHAMBERS: Yes.

SENATOR JENSEN: Yes, go ahead.

SENATOR CHAMBERS: Senator Jensen, did you participate in the drafting of this amendment?

SENATOR JENSEN: Yes, I did, and then the final...well, of course, Bill Drafters came up with the amendment, but there are certain portions where there are dates on it, and I guess those that did not have a date then are subject to the E clause. So this one, on the commission, would be subject to the E clause.

SENATOR CHAMBERS: You voted for this amendment, didn't you?

SENATOR JENSEN: Yes, I did.

SENATOR CHAMBERS: That's probably because you participated in putting it together, more or less.

SENATOR JENSEN: That is correct.

SENATOR CHAMBERS: But you didn't read the part of the amendment, or you forgot, that said there's an emergency clause?

SENATOR JENSEN: Concerning the commission, yes, that is correct. I did not read that or I...either that or I forgot that, but...

SENATOR CHAMBERS: Okay. So as soon as this bill would be passed into law...and presume, let us, for the sake of the discussion, that the Governor signs it. How long after that

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would you want to see the first meeting convened?

SENATOR JENSEN: Oh, I would say within ten days.

SENATOR CHAMBERS: So that means within ten days you and Senator Baker are going to select 12 people from these various areas who will serve on this commission. Is that true?

SENATOR JENSEN: I would say we might have our first meeting. Whether we'd make our selections, maybe not. Might take several meetings.

SENATOR CHAMBERS: Oh, so you mean the meeting between you and Senator Baker.

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: Okay. How soon would you envision the commission having had 12 members appointed so that it can commence operations?

SENATOR JENSEN: I don't know that there's an absolute date on that, but they have two years, I believe, to complete their work. Well, now, wait a minute. There is another date on that. I would have to review back to what...there were several drafts that brought us to this point.

SENATOR CHAMBERS: And the final draft, for which you voted, contains information with which you're not sufficiently familiar to answer the questions...

SENATOR JENSEN: That is correct.

SENATOR CHAMBERS: ...I'm asking right now.

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: Senator Jensen, how will you go about selecting a person who has a Nebraska motor vehicle operator's license?

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SENATOR JENSEN: Well, to me, that's almost like a member at large. It just says that somebody who has a license, and...

SENATOR CHAMBERS: Does it say that the license has to be in effect?

SENATOR JENSEN: It says a license. When I hear that, to me, it would certainly imply that it be into effect.

SENATOR CHAMBERS: When we get to a representative of individuals licensed to practice medicine and surgery in Nebraska, with expertise in the area of head trauma, would you compile a list of all such persons? And how would you go about compiling that list?

SENATOR JENSEN: On that, I would probably call the Hospital Association and ask for names of people who are in ER in head trauma.

SENATOR CHAMBERS: And...

SENATOR JENSEN: Or not necessarily head trauma, but certainly in trauma areas across the state.

SENATOR CHAMBERS: And if such a person felt that there had been enough...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...studying and there was nothing that would develop from this and he or she had no time to spare, would that slot remain vacant?

SENATOR JENSEN: I'm sure we could find somebody to fill that slot.

SENATOR CHAMBERS: But if nobody would, what would happen? It would remain vacant. Is that correct?

SENATOR JENSEN: Yes, but I'm sure there are those that would be willing to serve.

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SENATOR CHAMBERS: Have you talked to any who would be willing to serve?

SENATOR JENSEN: A matter of fact, a couple, yes.

SENATOR CHAMBERS: You were so sure this bill would be enacted into law?

SENATOR JENSEN: No. I just know a couple that have an interest in this area that certainly would be willing to serve. Whether Senator Baker would approve of those, too, he might have others.

SENATOR CHAMBERS: Well, who is Senator Baker? He's not even here. Oh, I see him now. We're going to have a little fun in his absence. Senator Baker, I'm just going to talk to Senator Jensen on this time, because we're almost out of time. Then I have a question or two I'd like to put to you. Senator Jensen, what is a Nebraska Class M license?

SENATOR JENSEN: That's somebody...

SENATOR CUDABACK: Senator Chambers, you may continue. It's your third time.

SENATOR JENSEN: Okay.

SENATOR CHAMBERS: All right. Thank you, Mr. President.

SENATOR JENSEN: That is somebody who has a driver's license, and on that driver's license "M" is on there, meaning motorcycle, that they have been approved to ride a motorcycle.

SENATOR CHAMBERS: Where is the "M" located?

SENATOR JENSEN: Oh, golly, I used to have one. I don't...

SENATOR CHAMBERS: Suppose it fell between a person's first name and last name.

SENATOR JENSEN: (Laugh) No, there's a box on there, I believe,

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that...for special qualifications. If you had a CDL, that would be on there. If you had...well, I think the same restrictions. If you're required to wear glasses, that's on there.

SENATOR CHAMBERS: Now, Senator Jensen, some of the people in here may be appointed by the Governor, or with his consent or approval, would you agree, such as a representative of the Department of Economic Development?

SENATOR JENSEN: Yes, I would agree.

SENATOR CHAMBERS: Okay. Now, a representative of the University of Nebraska with expertise in statistics, you don't say a statistician. What's the difference between a statistician and a person with expertise in statistics? Is a person with expertise in statistics the same as a statistician?

SENATOR JENSEN: Certainly may be. I would...we have people in the university system that do study figures all the time, and I guess that's what I would be looking for. Some...

SENATOR CHAMBERS: Could a person have expertise in statistics without being a statistician?

SENATOR JENSEN: Could be, yes.

SENATOR CHAMBERS: Which would you rather have, a statistician, or a person with expertise in statistics?

SENATOR JENSEN: I think I'd rather have the statistician.

SENATOR CHAMBERS: Why don't we just say statistician then?

SENATOR JENSEN: That's fine with me.

SENATOR CHAMBERS: Because that term...do you think that would convey more precisely what you would have in mind? If I were interested in this bill, that's what I would want, somebody who would qualify as a statistician, and it could be established what that means. But when you say a person with expertise, that doesn't even have to be a person who studied statistics, who

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understands the science of statistics or the art, or any of the other things we would expect a statistician to know. You know...or, do you feel that there's a difference between a person who is a certified public accountant and a person who knows accounting?

SENATOR JENSEN: No, the CPA is a designation that...

SENATOR CHAMBERS: And that's what I'm trying to get at, so that if you're going to do this at least the positions that are listed in the bill have credibility. Why would there be a representative of the Department of Roads?

SENATOR JENSEN: Well, again, they have expertise on the roads, their makeup, and certainly speeds, and all of those types of things that I would think would help...be helpful.

SENATOR CHAMBERS: And you mean it would take a person...Senator Jensen, you're a contractor but not a road builder. Is that true?

SENATOR JENSEN: That is correct.

SENATOR CHAMBERS: Do you know the difference between a blacktop highway and a concrete highway?

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: Do you know the difference between a dirt road and a gravel road?

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: Well, you could do what this person is there for, couldn't you? I mean, what does this person bring to the table that is unique?

SENATOR JENSEN: Oh, perhaps the driving experience on those roads that I don't have. What I mean by experience, what I'm saying is whether...certainly a gravel road is not a great road to ride on a motorcycle. I'll tell you that right now.

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SENATOR CHAMBERS: And you don't...you need somebody from the Department of Roads to tell you that?

SENATOR CUDABACK: One minute.

SENATOR JENSEN: (Laugh) No, I figured that one out myself.

SENATOR CHAMBERS: Would you require this person to have been a motorcycle driver? And if not, what particular value does this representative have? Or was that just somebody thrown in?

SENATOR JENSEN: Well, it was somebody that was just agreed to. Certainly we could come up with different designations. I don't have a problem with that.

SENATOR CHAMBERS: Suppose some of these would be eliminated rather than trying to come up with somebody maybe to replace such a person? And I know in order for that to be done, the number, the word "twelve," would have to be stricken. But I'm going to take us through this step by step, and when I get to my next amendment, that's when I will talk to Senator Baker, so you won't be the only one having to do this.

SENATOR JENSEN: Okay.

SENATOR CHAMBERS: Thank you, Senator Jensen.

SENATOR JENSEN: Thank you.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of FA315. Senator Baker.

SENATOR BAKER: Thank you, Mr. President, members. I'm going to try and answer some of those questions dealing with transportation issues, I guess. The most recent one was why we had someone from Department of Roads and State Patrol. Both those agencies keep records of accident reports and road conditions and actually roads. If there was a question about a

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particular road, how it was designed, and why they may have more motorcycle accidents on a particular stretch of road, then that's why Roads would be involved. And Senator Chambers is tied up, so I'll get to answer this question again, I'll bet. The "M" on the motorcycle endorsements, I think Senator Cudaback could answer this question. I believe he has a big old motorcycle. But it's under endorsements, at least on my driver's license. I have a commercial driver's license, Class A. On the back it says, endorsements, and listed under those endorsements is an "M," motorcycle. So that's a license I just...an endorsement I just picked up. Got my donor. I actually haven't looked at this. And I may editorialize a bit while I have my driver's license in my hand. The federal Congress has seen fit to basically mandate to the states that we go back and reexamine all our driver's license issues and requirements of identification and so on to get this, and we're going to have an interim hearing, probably sometime late summer, early fall, to alert the public as what we may have to do here with the federal requirements and so on. We have a state-of-the-art driver's license in Nebraska. If you recall, we've gone through those driver's license issues the last few years, sessions. I'm going to continue to educate people on that because every time we have a bill dealing with driver's licenses it comes up. We have a very good design, and we have different driver's licenses for minors as opposed to those over 21, and so on, and would not be able to duplicate them, and so on. But we're going to be forced to reissue a lot of driver's licenses and so on because of changes in federal statutes, and that comes down to us because there are states that were not as diligent with driver's license, IDs and so on, as Nebraska has been. The...I was listening to Senator Chambers, some of the questions he asked. And I would assume that Senator Jensen would be inclined to be in charge of people in the...his committee area of dealing with head trauma and so on. It'd be a tossup between the two of us about Department of Economic Development representatives. I would...and I have already had some people contact me, like Senator Jensen, volunteering to serve on this if the bill does in fact pass. In fact, we have a list of...I think there's a couple other committees that...or other bills that assign duties to the Transportation, Telecommunications Committee and I think one of them is distance

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learning. Senator Raikes has a bill out there. We've had people say they'd be willing to plan that. We do keep a file of people that have contacted the committee saying they'd be willing to serve on this committee, that committee. I'm sure every other committee chair has those too. But we get volunteers. And we'd have to screen them. If we have more than one or two people for a particular required appointed job on these committees, then we'd have to screen them and see who we thought was the best candidate, I would assume. But we do maintain a file that...for those people who say, we'd be willing to serve on this or that task force, and so on. And I would try and have some people involved that would be here after I'm term limited out. There's no senators, other than Senator Jensen and I, would serve on the committee, and we'd like to see some other involvement by senators who would not necessarily be termed out. So this whole bill, I was...I have been listening. I've been down in my office doing some other work, but I do listen as the debate goes on, and I was quite satisfied with the green copy. I know Senator Smith is not real happy with the compromise, Senator Jensen, Senator Beutler. I guess that's the art of compromise. But I think we've put a good product out, and it didn't work so well once it hit the floor. But the original product, I need to remind you, the green copy, said we will allow people, riders, to go without a helmet after you have taken the motorcycle training course. I've checked into that. I do have a motorcycle endorsement on my license. I did not take a training course. I think I might, though, still. But those training courses are very valuable and I think that's the key to motorcycle safety, is not to let, in particular, young people get on a motorcycle, and a 16-year-old I'm thinking, in terms of get on a motorcycle and drive without some training. And right now, all you have to do is pass the test. I have no fault...I'm not faulting the Department of Motor Vehicles, but it's a 25-question test. Someone who reads the book can pass the test.

SENATOR CUDABACK: One minute.

SENATOR BAKER: And then you go out and take a driver's course. And once again, that's the best we can come up with through DMV. You are followed around with a person, in most cases, or I think

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in Lancaster...some of the more populous counties, they may have a course you have to navigate. In my case, you go drive around, make some turns and stops and so on, et cetera, and it's not exactly what I'd consider adequate training. In fact, it's not training at all. So I think a big part of this issue boils down to the training requirement, and I do believe that, in particular, a beginning rider, that's critical to their safety. It's defensive driving at its best. You have to anticipate these...

SENATOR CUDABACK: Time, Senator Baker.

SENATOR BAKER: ...issues. Thank you, Mr. President.

SENATOR CUDABACK: Further discussion on FA315? There are no lights on. Senator Chambers, I'll recognize you to close on FA315.

SENATOR CHAMBERS: Thank you. Mr. President, we're trying to work our way to something, and since there's no objection to this amendment, I will go ahead and take a vote on it. But I will not prolong the proceedings on this particular amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Question before the body is adoption of FA315 to AM1153. All in favor of the motion vote aye; those opposed vote nay. Voting on adoption of the Chambers amendment, FA315 to AM1153 to LB 70. Have you all voted on the amendment who...we're voting on the Chambers amendment, FA315. You all voted who care to? Record please, Mr. Clerk.

CLERK: 9 ayes, 1 nay, Mr. President, on the amendment.

SENATOR CUDABACK: The amendment is not adopted.

CLERK: Mr. President, I do have other amendments, but I do have a priority motion. Senator Brashear would ask unanimous consent to bracket LB 70 until June 1.

SENATOR CUDABACK: Any objection? Seeing none, the bill is

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bracketed till June 1. Mr. Clerk, I assume we're passing over LB 70A. Mr. Clerk, LB 548, please, when you get time.

CLERK: Mr. President, I do have motions on LB 70A, but likewise I have a priority request. Senator Brashear would ask unanimous consent to bracket LB 548 until June 1, 2005.

SENATOR CUDABACK: Any objection to the request to unanimously bracket? Seeing none, so ordered. We now go to Select File, 2005 senator priority bills, the Cornett division. Mr. Clerk, when you get time, LB 478.

CLERK: LB 478, Mr. President. E & R amendments have been adopted. When the Legislature left the issue, Senator Cornett had pending AM1690 as an amendment, and Senator Chambers had pending...and Senator Chambers had pending FA306 as an amendment to the Cornett amendment. (AM1690, Legislative Journal page 1713.)

SENATOR CUDABACK: Senator Cornett, would you like to give us a summary of AM1690?

SENATOR CORNETT: AM1690, I actually have an amendment to AM1690 that I have filed with the Clerk. Senator Chambers and I have spoke on this bill a number of times and I believe it is his intention to withdraw amendment FA306. Senator Chambers, am I correct?

SENATOR CUDABACK: Senator Chambers, are you...would you respond to a question from Senator Cornett?

SENATOR CHAMBERS: I certainly will.

SENATOR CORNETT: I believe, from our conversation, it is your intention to withdraw amendment FA306?

SENATOR CHAMBERS: That's true.

SENATOR CORNETT: Okay.

SENATOR CUDABACK: Are you requesting to withdraw?

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SENATOR CORNETT: Senator Chambers would have to request to withdraw.

SENATOR CUDABACK: Senator Chambers, I'm asking you, are you requesting to withdraw?

SENATOR CHAMBERS: I would wait until I'm recognized on my amendment, so that everything will be done...you know, so that the transcribers or anybody who reads the record will know how we proceeded.

SENATOR CORNETT: Okay.

SENATOR CUDABACK: Senator Chambers, you may give us a summary of what your amendment does.

SENATOR CHAMBERS: Mr. President, members of the Legislature, my amendment would improve the bill. Senator Cornett and I talked about it and her amendment improves mine. So there are a few words from a song, which I'm not going to sing, which will explain why I'm taking the position that I'm taking. It was called the "Big Iron" on his hip. It said, no one dared to ask a question, no one dared to make a slip, no one dared to challenge the stranger with the big iron on his hip. Today, the one with the big iron is a she and, based on the presence of that big iron, I'm withdrawing this amendment.

SENATOR CUDABACK: FA306 is withdrawn. Senator Cornett. Mr. Clerk.

CLERK: Mr. President, Senator Cornett would move to amend her amendment with AM1745. (Legislative Journal page 1810.)

SENATOR CUDABACK: Senator Cornett, to open.

SENATOR CORNETT: Yes, AM1745 would insert, on page 1, line 3, after "information," "and who actually accesses classified information in performing his or her duties," and in line 7, after "information," insert: and actually accesses classified information in performance of his or her duties. This amendment

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is introduced to eliminate people from the exemption that would not actually access classified information regardless of whether they had a security clearance or not. Senator Chambers correctly pointed out that our bill did not include people that could be doing nonclassified work so, ergo, we entered the amendment to his amendment, which was the amendment to AM1690.

SENATOR CUDABACK: You've heard the opening on the Cornett amendment to AM1690. Open for discussion on AM1745. Senator Mines.

SENATOR MINES: Thank you, Mr. President. Could I ask Senator Cornett a question, please?

SENATOR CUDABACK: Senator Cornett, would you respond?

SENATOR CORNETT: Yes.

SENATOR MINES: Senator, I was just sitting here wondering. I understand what you're doing. I don't understand how one might verify...how might we as a state verify that these people are or are not accessing records, those kind of records?

SENATOR CORNETT: That would be...go back to the original bill which the security officer of the...they would have to register with the security officer of that company...

SENATOR MINES: So...

SENATOR CORNETT: ...the type of work that they're doing.

SENATOR MINES: So, upon registration, they have some form that they can then turn in and say that to whomever they turn it in to. Is that right?

SENATOR CORNETT: I believe so, sir, yes.

SENATOR MINES: Okay.

SENATOR CORNETT: Senator Landis...

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SENATOR MINES: May I? Mr. President, I'd like to offer my time to Senator Landis.

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: Senator Mines, things like this are done generally by the Department of Revenue on a certification basis. The Revenue Department says certify X fact and if you don't tell us the truth you're in violation of the tax code. You would learn that through the audit process, because you'd check your certifications in the audit process, but you'd do it in a relatively simple form in which you'd have a certification process going on between the Department of Revenue and the taxpayer, and the taxpayer is the corporation.

SENATOR MINES: So it is verifiable. Thank you, Mr. President.

SENATOR CUDABACK: Further discussion for AM1745? Senator Cornett, there are no further lights on. You're recognized to close on AM1745 to AM1690 to LB 478.

SENATOR CORNETT: AM1745 is an amendment that needs to be passed for the bill to clarify the language in regards to who is eligible for this exemption and what their job qualifications should be. Senator Chambers was kind enough to point out some of the miswording in the original bill and this is where the amendments have evolved from. I urge you to support AM1745. Thank you.

SENATOR CUDABACK: Thank you, Senator Cornett. You've heard the closing on AM1745. The question before the body is, shall that amendment be adopted to AM1690? All in favor vote aye; opposed, nay. The question before the body is the Cornett amendment to AM1690. Have you all voted on the question who care to? Please record, Mr. Clerk.

CLERK: 25 ayes, 0 nays on adoption of the amendment.

SENATOR CUDABACK: The amendment is adopted. Back to discussion of AM1690, unless there's something else on AM1690, Mr. Clerk?

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CLERK: I have nothing further on the amendment, Mr. President.

SENATOR CUDABACK: Back to discussion of AM1690. Senator Engel.

SENATOR ENGEL: Mr. President, members of the body, I think what we're doing, we're narrowing this down so far now that the thing is worse than it was to start with. We're taking a very, very select group of people and eliminating them from paying income taxes, and I do honestly believe that we have other shortages here in Nebraska and if you're going to do it here, why not do it there? And if we're not doing it to all the military retirees, why pick out this select group? I still think these defense contractors can pay what it takes to get these people and keep them in Nebraska, so I just don't think this is a good bill or it's a good idea, and I certainly oppose it. Thank you.

SENATOR CUDABACK: Thank you, Senator Engel. Further discussion, AM1690? Seeing no...seeing no other further lights on, Senator Cornett, you're recognized to close on AM1690.

SENATOR CORNETT: AM1690, with the amendment that we just filed, AM1745, would clarify exactly who would be eligible for this exemption and who would not be eligible for the exemption and the process involved in the exemption. I urge you to support AM1690 and I...

SENATOR CUDABACK: Have you finished, Senator Cornett?

SENATOR CORNETT: Yes. Yes.

SENATOR CUDABACK: You've heard the closing on AM1690. The question before the body is, shall that amendment be adopted? All in favor vote aye; all those opposed, nay. Voting on adoption of the Cornet amendment to LB 478, AM1690. Have you all voted on the question who care to? Have you all voted who care to on AM1690? Record please, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of Senator Cornett's amendment.

SENATOR CUDABACK: The amendment has been adopted.

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CLERK: Mr. President, I now have a unanimous consent request from Senator Cornett to bracket the bill until June 3 of 2005.

SENATOR CUDABACK: You heard the motion to bracket, unanimous consent. Objection? So ordered, the bill is bracketed. We do now pass over LB 478A. We now go to Select File, 2005 senator priority bills, the Raikes division. Mr. Clerk, LB 577, please.

CLERK: Senator Flood, I have Enrollment and Review amendments on LB 577. (AM7116, Legislative Journal page 1811.)

SENATOR CUDABACK: Senator Flood, motion, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendments to LB 577.

SENATOR CUDABACK: Heard the motion, adopt the E & R amendments to LB 577. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Senator Raikes would move to amend with AM1759. (Legislative Journal pages 1835-1836.)

SENATOR CUDABACK: Senator Raikes, to open on AM1759 to LB 577.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I'll explain this amendment, hopefully quickly. It does about four different things. One of them, it allows early childhood education programs that have been in compliance with grant requirements to become eligible under the aid formula, even though they haven't actually received a grant program. We have an incidence or two in the state where there has been a program in place. It's been...the one I'm thinking of has been funded by a public school. They did not qualify through the...or they didn't go through the grant program, but this would allow them to become eligible through this procedure that we have in...or we're proposing here in LB 577 to be to, after three years, become a part of the aid formula. A second point, it allows early childhood education program to...programs

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to have hours similar to the instructional hours for kindergarten or fewer hours. You remember, we used the grant program as a gatekeeper for entry into the aid formula, if you will. We have schools that offer full-day kindergarten and some that offer only half-day kindergarten. The priority in the original bill was to say you prioritize those that the early childhood program matches what's available in kindergarten. We're sticking with that, except we're saying that if you have full-day kindergarten then you shouldn't be...receive a lower priority if your proposal is to have an early childhood program that has only half-day kindergarten. You can't go the other way. You can't have a full-day early childhood program and only a half-day kindergarten program, but the other way would be okay. It requires operating budgets to demonstrate that the programs will continue to receive at least 50 percent of the funding from other sources for continued grants...for continuation grants and state aid. This is an important point. Keep in mind now that the requirement is being placed on the community that receives the grant program, the early childhood education grant program or state aid, that they must match the amount of money that comes from the state through either state aid or the grant, with funds from the local community. And experience is that Head Start sometimes provides that, other community sources, and so on. So this...that requirement is still in place and emphasized. Finally, the point is, an unusual one, it divides a very long paragraph to improve readability. I wouldn't say that often we do that in statute, but that's our effort right here. So, at any rate, these are provisions of this amendment. I would ask for your adoption of it. While I am...have the floor for a moment, I would also call your attention to the fiscal note on LB 577. There's one, a new one, a revised one. Some excellent work I think has been done to prepare it. This not only goes through the details of LB 577, explains to you how it operates and so on, but lays out clearly the financial implications of LB 577. I will mention quickly at this point, there is no A bill with LB 577 because it does not make any demand on General Funds during the biennium that we're now budgeting for. It would, however, provide, again, two things. It provides a prioritization of the grant money in the upcoming biennium, and it also would include early childhood programs in the aid formula in the out biennium. So,

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again, there's no impact in the upcoming biennium, but there is an impact in the out biennium and that impact is spelled out in this fiscal note. In fact, it's spelled out clear out to the years 2011-2012. And if some of you took the trouble to look at the original fiscal note on the original green copy, you can see, by looking at this one, that there has been a very considerable scaling back of the program and we're scaling it back mostly by implementing it at a much slower rate. So again, I would call your attention to that fiscal note. If you have any questions, I'll be happy to try to address them, and I would ask your support of this amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the opening on AM1759 by Senator Raikes to LB 577. Open for discussion. Senator Raikes, there are no lights on. Senator Raikes waives closing. The question before the body, adoption of the Raikes amendment, AM1759. All in favor vote aye; opposed vote nay. Voting on adoption of the Raikes amendment, AM1759. Please record, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of Senator Raikes' amendment.

SENATOR CUDABACK: The Raikes amendment has been adopted.

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CUDABACK: Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 577 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 577 to E & R for engrossing. All in favor say aye. Discussion? All those opposed, nay. LB 577 is advanced. We now go the next agenda item, General File, 2005 senator priority bills, Kruse division. Mr. Clerk, LB 373, please.

CLERK: Mr. President, LB 373, a bill introduced by Senator Bourne and others. (Read title.) Introduced on January 11, referred to the Government, Military and Veterans Affairs

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Committee, advanced to General File. I do have committee amendments. (AM0573, Legislative Journal page 654.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Bourne, to open on LB 373.

SENATOR BOURNE: Thank you, Mr. President, members. First of all, I'd like to thank Senator Fischer for making this bill her priority this year. As I look around to determine what we need to do as a Legislature to prepare for the onset of term limits, my personal feeling is that we, as a Legislature, need to add some sort of legislative oversight to the rule-making process, and that is the intent of LB 373. I'm not going to go through element by element of what LB 373 does because the committee amendment and then subsequently Senator Fischer's amendment, AM0984, will replace the elements of the green copy of the bill. So, rather than confuse everyone and go through three different iterations of what the process is for legislative oversight on the rule-making process, I simply am going to advocate to you or argue for why we need this. And again, I think that this is one of the most important things we need to do as a Legislature to prepare for the onset of term limits. I'm going to give you some examples of where I feel governmental agencies have gone a little too far in the rule-making process. This summer, there was a rule being considered by the Department of Environmental Quality that would allow for the adoption of air quality standards that are stricter than federal regulations. Electrical generators tell me that that's about \$450 million of additional revenue to the...or, excuse me, additional rates that taxpayers, ratepayers, would have to pay. Is that appropriate that we have more stringent standards? Perhaps, but I believe that's a legislative function to decide that. This summer...or, excuse me, last summer the Fire Marshal's Office banned grills on apartment balconies. Is that a good policy? Probably so, but I believe, again, that is a legislative policy decision that should be made, not an administrative agency. A few years ago the Department of Revenue's definition of "disabled" for purposes of the homestead exemption program was in direct conflict with what was written in statute. There was a bill that was amended. The department says, no, we think the Legislature meant it this way, even though the plain meaning of

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the statute said it differently, and I don't think that's appropriate. In 2003, our Supreme Court ruled that the Department of Health and Human Services' regulation regarding a family cap on welfare recipients should not have applied to disabled people. In 2001, the Lancaster District Court ruled that the Department of Health and Human Services had imposed a rule regarding time limits on welfare that was not spelled out by the Legislature. I'm sure each and every one of you that have been in the Legislature for a number of years can come up with examples of legislative...or, excuse me, agency rule making that did not comport with legislative intent. LB 373, as amended, would provide for some legislative oversight on the rule-making process. I'll state to you that we, Nebraska, are one of six states that do not have legislative oversight on the rule-making process. Again, I think that in a response or in anticipation to term limits, this is an absolutely vital area that we must explore. We should make certain that there's only one lawmaking body in the state, and that is the Legislature. When an agency makes law, rather than adopts rules to carry out the law, they've gone too far. LB 373, in my opinion, reins them in and simply limits them to making rules, not laws. With that, I will close and can explain later in greater detail on Senator Fischer's amendment, which I support, that will become the bill.

SENATOR CUDABACK: Thank you, Senator. Heard the opening on LB 373. Open for discussion. Senator Schrock. I'm sorry. I'm sorry, Senator Schrock. I made a mistake. There are Government, Military and Veterans Affairs Committee amendments. Senator Schimek, you're recognized to open.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. The committee advanced the bill on a 7 to 1 vote, with 1 present and not voting; had a good hearing on it and had many, many proponents of this bill, if you'll look at your committee statement. What the committee amendment does is, first, specifies that an agency proposing to adopt, amend, or repeal a rule or regulation must provide the information to the Governor at least 30 days before the public hearing, when notice of a proposed rule or regulation is sent out. The information provided to the Governor by an agency will include the

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identification of the authorizing statute or legislative bill. It will also include a description, including a quantification of the fiscal impact on state agencies, political subdivisions and regulated persons. The committee amendment harmonizes this language with other provisions in the Administrative Procedures Act. Finally, the amendment allows any member of the Legislature who feels aggrieved by the amendment, rule, or regulation to file a complaint with the Chair of the Executive Board, and this is a change from the original bill, which allowed any person who felt aggrieved to file a complaint. That person would now have to go through their own member of the Legislature. With that, that, Mr. Chairman, I would urge adoption of the committee amendments.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the opening. Mr. Clerk, a motion, please.

CLERK: Mr. President, Senator Fischer would move to amend the committee amendments with AM0984. (Legislative Journal page 1039.)

SENATOR CUDABACK: Senator Fischer, to open on your amendment to the committee amendments to LB 373.

SENATOR FISCHER: Thank you, Mr. President and members of the body. I'd like to thank Senator Bourne for introducing this bill. I believe it's a very important bill and, with a few of the minor changes that we've proposed in it with this amendment, it can make a big difference in the body of law that has very little oversight currently. I'm sure you've all heard the phrase that the agencies are the fourth branch of government. There is more than some truth to this statement. Agencies have tremendous power when it comes to adopting and amending rules and regulations that have a huge impact on the average citizen. The problem with these rules and regs is that there are not enough checks on the agencies' power in the adoption process. I understand that the Governor's Office must approve the rule, that the Attorney General must okay its constitutionality and statutory authority, and that the Secretary of State must certify its form, but what about the underlying policy of law? How does the Governor know what that is supposed to be? Who

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checks to make sure that this rule or regulation is what the people want, and that it is good policy for the state of Nebraska? From what I remember from junior and senior high civics class, that is the duty of this body, that is the duty of the Legislature. I have nothing against the Governor or the Attorney General or the Secretary of State, but I don't feel comfortable with the rule and regulation process as it now stands, and I feel LB 373 is a good step in the right direction. The Nebraska Supreme Court has stated it is the fund...it is fundamental that in the legislative grant of power to an administrative agency such power must be limited to the expressed legislative purpose and administered in accordance with standards prescribed in the legislative act. I feel that agencies have been allowed to stray away from this limitation of their power. They are allowed to promulgate rules and regulations without seriously considering the effects it will have on the lives of everyday citizens, and whether it fits within the public policy that has been set out by this body. LB 373 is a step in reversing this present situation that we have allowed the agencies to take advantage of. In my short time in office, I've already logged many complaints regarding a variety of agency rules. I've received letters, for example, from the Springview Village Board of Trustees and the village board of the city of...the village board of Oconto regarding the Nebraska Department of Health and Human Services and their Regulation and Licensure Title 179, Chapter 16. Under these regulations, any water system that chlorinates will be required to take water sample five days a week. This seems like a simple rule, shouldn't be a problem. You have to test your water five days a week. Well, the village of Springview and the village of Oconto in the 43rd District estimate that that's going to cost them \$12,000 a year. This will make a big dent in their budgets that these small villages have. I don't think that the NDHHS realize the fiscal impact these regulations, that go above and beyond the EPA requirements, would have on small villages like Springview and Oconto. As the law stands today, these disgruntled organizations and citizens have no place else to go except to court, and many people don't have the time or the money to pursue that option. So I feel LB 373 is a law that we need. I think it's one we have to have passed. Under the amendment to the amendment, the main change in that will be in

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Sections 1, 3, and 4. That's the most significant change and, with Senator Bourne and Senator Schimek, we agreed that adding the word "estimated" should help calm some of the fears that the agencies have when they are asked to quantify the fiscal impact. I also believe that by having to quantify that fiscal impact, even though we've put in that it's estimated, that is allowing some accountability, and local governments and local citizens will be able to see what it's going to cost when a rule and a regulation is required of them. So I feel that that is the most important and significant change. In Section 4, there's been language that has been added that no person can challenge the validity of a rule based on the description of the estimated quantification. That is available to the public in the Secretary of State's Office. Section 7, there has been a change there, too, and not all the rules and regulations are based on legislative directions. That's because sometimes an agency obtains its rule-making authority from somewhere other than the Legislature--for example, under federal law. I believe some of these changes have helped to alleviate some of the fears of the agencies on possibly legal action taken by political subdivisions or by individual citizens because of the quantification that is required under this. And so by adding the word "estimated," I think that will help. With that, I'll return my time to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Fischer. You've heard the opening on AM0984 to the Government, Military and Veterans Affairs Committee amendments to LB 373. Open for discussion. Senator Schrock, followed by Senator Fischer and others.

SENATOR SCHROCK: Mr. President, if Senator Bourne would answer some questions.

SENATOR CUDABACK: Senator Bourne, would you yield to a question of Senator Schrock?

SENATOR BOURNE: Certainly.

SENATOR SCHROCK: The bill, as amended, I think might be okay, but the green copy did have...I did have some concerns, so help me on this. We have the Environmental Quality Council, who

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makes rules and regulations for environmental issues. I'm thinking of livestock facilities, of emissions from manufacturing facilities. We have the Game and Parks Commission, who makes rules and regulations. And so if there's...the green copy, any senator that objected to any of these rules and regulations could bring the issue forward, but under the amendment only the chairperson of the committee or the sponsor of the original legislation could bring that issue forward. Is that correct?

SENATOR BOURNE: That's correct. When an agency proposes...well, just to go back a little bit, 30 days prior to the public hearing or at the time the agency applies for the waiver of a public hearing, the agency has to provide a laundry list of information. Okay. Then, when an agency proposes a rule, they must forward to the Exec Board the information provided in that laundry list that they have to provide to the Governor. The Exec Board, though, shall then forward that information to the chairperson of the standing committee and the member of the Legislature who was the primary sponsor of the bill, if applicable. And the reason that's in there is, because of term limits, they might not be able to do that. Any member of the Legislature who feels aggrieved may then file a complaint with the Chair of the Exec Board stating specifically what their complaint is. The Chair of the Exec Board then refers that on to the standing committee, and if the standing committee feels the complaint has merit, the committee can request a response from the agency and the agency must respond within 60 days. But I do want to point out to you, in Senator Fischer's amendment, the one we're discussing now that I support, on the last page it says, nothing in this section shall be construed to prohibit the adoption or promulgation of the rule or reg in accordance with other sections of the Administrative Procedures Act. So again, all this does is provide oversight where the Legislature is actually looking at a proposed rule or reg, and they can object that it doesn't meet legislative intent. But it doesn't stop the rule-making process from going forward.

SENATOR SCHROCK: Okay. So the rule-making process can go forward while all this is being contemplated.

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SENATOR BOURNE: That's how I'm reading the committee amendment...or, excuse me, AM0984. If you look at page 9, lines 2 through 4, it says, nothing in this section shall be construed to prohibit the adoption or promulgation of the rule or reg in accordance with other sections of the APA. Now...

SENATOR SCHROCK: And the chairperson of the affected committee, what power do they have then?

SENATOR BOURNE: They can send a letter to the Exec Board asking for...or setting out why they object, and then the Exec Board will...the Exec Board refers that complaint to a standing committee, all right, and then they ask the agency...they set out their concerns in writing to the agency, and the agency has to respond in 60 days.

SENATOR SCHROCK: Okay. I'm just trying to understand here, because the green copy of the bill, I think, had a lot of problems. But this pretty well limits it to one member of the committee, and the Exec Board has to do a ruling and...all right. I appreciate that explanation. I'll stay tuned to what's happening here.

SENATOR CUDABACK: Thank you, Senator Schrock. On discussion of the Fischer amendment, Senator Fischer.

SENATOR FISCHER: Thank you, Mr. President. On the amendment of what Senator Bourne and Senator Schrock was just...they were just discussing it, in Section 7, the amendment adds language that clarifies that a requesting...that requesting an agency to justify a rule or regulation does not stop the promulgation of that rule. I think that's a...that's really important to consider and it's a good change that we made in the bill because it makes it consistent because it also includes all the rules and regulations that are also adopted. So it doesn't stop the process. And I guess I would yield to Senator Schrock, if he had other questions he wanted to ask either myself or Senator Bourne.

SENATOR CUDABACK: Senator. Senator Bourne.

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SENATOR FISCHER: Or I will yield to Senator Schrock, if he had more questions on that.

SENATOR CUDABACK: Oh. Senator Schrock.

SENATOR SCHROCK: (Microphone malfunction)...by another member of the committee, so it would...I have some concerns, but I think the amendment clears it up. I will look at it between now and Select File. But we can't hamatring the decision-making process and not have rules and regulations go forward by agencies such as Game and Parka, the Environmental Quality Council, because we can't do all the details by statutes. I realize that there has been times when maybe our agencies have been overreaching and then the remedy then is to introduce a piece of legislation to try and reverse what they've done, and I'm not sure this changes that other than it does bring them forward and they have to tell us what they're doing and why, and then we have to, I guess, decide whether we want to change that, which I would assume takes legislation. Was that fair enough?

SENATOR FISCHER: I would think so. I...

SENATOR SCHROCK: Just because the Chair of a committee disagrees with what the department is doing, that doesn't change anything. There would have to be some statutes changed, would they not?

SENATOR FISCHER: I don't know if you'd have to have statutes changed, but I think one part of this bill that I really like, and it's because of my concern with term limits, too, and where...where is the balance going to be within the different branches of government when you have term limits and the...I feel the executive branch is going to possibly gain more influence, especially with their agencies, with term limits here in the Legislature. And with this bill, you have the...you have the chairman and you have members of the Legislature that are going to be able to have some kind of oversight on what the rules are. It's going to allow citizens to be able to approach their senators with problems. I mentioned some, Senator Bourne has mentioned some that are currently happening. That senator then can go to the chairman of a committee and be able to look

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into what these rules are and to find out if they are following legislative intent.

SENATOR SCHROCK: Can I...can I respond?

SENATOR FISCHER: I don't think we're hamstringing the agencies in any way on this.

SENATOR SCHROCK: Senator Fischer, whenever I've requested one of our state agencies to respond to inquiries or questions, they've always been very responsive now, and so I have to ask what we're going to change. I can see a situation where maybe we have a committee chair, who's antagonistic to one of the agencies they regulate, that could cause a lot of mischief. Let's just say I didn't like how Game and Parks set their pheasant and deer hunting season. We could consume a lot of their time by calling them in front of the committee for some things that were pretty pointless, when that shouldn't be the chair of the committee's responsibility. It should be the...should be the Game and Parks Commission that should be determining...

SENATOR BAKER PRESIDING

SENATOR BAKER: One minute.

SENATOR SCHROCK: ...when our hunting season should be. I'm just playing devil's advocate here a little bit.

SENATOR FISCHER: I...if I could, Senator.

SENATOR SCHROCK: I don't think that's going...I don't think that's going to happen, but I can see a committee chair being antagonistic towards one of their state agencies.

SENATOR FISCHER: If I could, Senator Schrock, since I believe it's my time here, I have an example for you. A petition was filed by Lynn Robertson of Long Pine in February of 1999. The petition sought to add a new section to Title 130, and this is with DEQ, by establishing both public notice and public hearings prior to the issuance of a construction permit for a livestock

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waste control facility over 2,500 animal units. At that time, state statute included a requirement for public notice of permit applications for operations greater than...let me turn the page...

SENATOR BAKER: Time, Senator Fischer.

SENATOR FISCHER: Thank you.

SENATOR BAKER: Thank you, Senator Fischer, Senator Schrock. The speaking order is Senator Flood, Bourne, Brown, and Schrock. Senator Flood, you're recognized to speak.

SENATOR FLOOD: Thank you, Mr. President, members. I stand in strong support of LB 373 for several reasons. As a freshman senator, looking at term limits down the road, our offices are the offices that get the calls as to what's going to happen. There may be some members in here that will be gone in a year and they also enjoy maybe 15, 20, 25, or maybe 35 years of experience in the Legislature. As a new state senator, I think this bill will provide us an ability to get the attention of an agency that fails to respond in a timely manner, and that has been the case throughout our freshman year. If you look at a professional corporation or an S corp or whatever type of corporation that the Secretary of State's might...Office might manage or oversee, you find we have shareholders, a board of directors, and officers of the corporation. In this state, the people would be the shareholders. The board of directors, in my opinion, together with the Governor, comprising two branches of government, compromise the board of directors; and the officers represent the agencies...or the agencies represent the officers. The officers of a corporation do not make rules that cannot be overruled by the board of directors without significant trouble. It should be easy for us to get the attention of an agency, and I would think that, as Senator Byars and I were talking, some agencies would welcome this type of oversight in an effort to relieve some of their responsibilities. Agency responsiveness, getting the attention of somebody in an agency to respond in a timely manner to a concern that you have, has been troubling to me. I've called an agency repeatedly, based on a constituent complaint or something that I see happen in my district. I do

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not receive return phone calls. I do not find out how the rules are made, the regulations are made. This bill will give a new state senator an avenue, a remedy to get the attention of an agency that maybe has decided it was...will not listen to the real policy-making body of state government. Who runs this state? Sometimes I wonder. Some agencies even have a policy cabinet officer, and their job is to coordinate the rules and regulations, and speak for the agency. Why do we need a policy cabinet when we have a Legislature with 49 state senators that are elected? I have to go back and answer to my constituents as to what I've done in the Legislature and why I voted a certain way. Rules can be made in this state behind the doors of an agency, with their public hearings, if you call them that, and making different calls each day as to which way the state should go. I like the idea of giving the Legislature the power to put its thumb right on top of what's happening in an agency, if they're making laws in their own little world, and call them on the carpet and say, let's take a look at this, what do the people of Nebraska really want, what do the people of Nebraska want via their elected representatives? Finally, I guess I would just offer this. Why would any agency be afraid of legislative oversight? We represent the people. They work for the people. They should welcome us providing our input, making their decisions easier by providing the oversight needed to run the state. And that's why I applaud Senator Bourne and Senator Fischer for putting this bill together. And I would offer Senator Brown any time that I have remaining.

SENATOR BAKER: Senator Brown, you have 1 minute and 20 seconds.

SENATOR BROWN: Thank you, Mr. President. I am in support of the amendment that's before us, the committee amendment, and the underlying bill. At a meeting of CSG when there was a discussion of what the most important thing that you could do to facilitate...

SENATOR BAKER: One minute.

SENATOR BROWN: ...good governance during a time of term limits, this was...this kind of legislation was the number one suggestion, because there is such a transfer of power from the

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legislative branch to the executive branch under term limits, and the way that you see that played out most often is at the agency level. I believe that we need to do this. We had grave reservations in the committee about the way that it was accomplished, the broadness of the way it was accomplished in the green copy, and that's why we made some of the amendments that we've talked about here in terms of who can ask for it so that it doesn't just become another activity that takes up time but actually accomplishes what...us having more control. But I think one of the...

SENATOR BAKER: Time. Time.

SENATOR BROWN: Thank you.

SENATOR BAKER: Thank you, Senator Brown and Senator Flood. Senator Bourne, recognized to speak next.

SENATOR BOURNE: Thank you, Mr. President, members. I just wanted to clarify the process. Okay. Thirty days prior to the public hearing, or at the time the agency applies for a waiver of the public hearing, they must forward this laundry list of information. It's a description of the rule and who it will impact, an explanation of why it's necessary, a statement indicating the rule is consistent with legislative intent, a statement indicating if the federal government mandates it, a description including an estimated quantification of the fiscal impact of the rule. Those things are already set out in an executive order now. All right? So...but the agency has to forward those on to the Chair of the Executive Board. So the same information that the Governor gets regarding this rule goes to the Chair of the Exec Board. The Exec Board then forwards that information to the chairperson of the standing committee and the member of the Legislature who was the primary sponsor of the bill, if that member is still here. After the agency submits the information to the Exec Board, any member of the Legislature who feels aggrieved may file a complaint with the Chair of the Exec Board. The Exec Board Chair refers the complaint to the standing committee. If the standing committee feels the complaint has merit, the committee may request a response from the agency and the agency responds in writing in

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60 days. There's no mechanism here for a standing committee to call an agency into a hearing. This is all done via writing. And I just want to point out a couple things. We are one of six states that do not have legislative oversight on the rule-making process. Senator Brown, I appreciate her comments. She indicated that this is a...that the CSG indicates that this is important, and I believe they're right. But I think I've introduced this bill actually in a more stringent form in each of the last four or five years, so this is something I absolutely think we need to do. It is not directed at any agency. It just simply says it simply provides us, the members of the Legislature, with a look at a proposed rule to determine if it comports with the intent of the Legislature. I think it's fair. I think it's appropriate. It's not singling any particular agency out. It treats them all the same. I think we absolutely have to do this as an obligation that we have to the citizens of the state of Nebraska in responding to term limits. With that, I very much support Senator Fischer's amendment, the committee amendments, and the bill. I would urge your adoption of all of them. Thank you.

SENATOR BAKER: Thank you, Senator Bourne. Senator Schrock, you're the next speaker.

SENATOR SCHROCK: Mr. President, members of the legislative body, the amended version of this bill is probably okay. I have some questions as we're...are we trying to fix a problem that isn't there? That is a question I pose to you. I, personally, don't know of any agency that isn't...hasn't been responsive to members of this legislative body, and especially to the chairs of the affected committees. Now, if I'm wrong on this let me know, but my experience is, is that the agencies that we've worked with, that I've worked with, have been very responsive to the Legislature and to the affected bodies. Now, I'm hearing some...I'd like to hear some examples. If I'm wrong, let me know. And if I am wrong then tell me how this fixes the problem. I don't want to be an obstructionist here because it's probably a pretty good piece of legislation. But I do ask why, why we're doing this, and I think the discussion on this would be appropriate. So thank you.

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SENATOR BAKER: Thank you, Senator Schrock. There are no further lights on. I'm sorry, a light did come on just now. Senator Stuhr, you're recognized to speak.

SENATOR STUHR: Thank you, Mr. President and members of the body. I do stand in support of the amendment and the bill, and I'll just give you one instance of...and I know that Senator Bourne will remember the body art legislation that was passed. And it was only because that my legislative aide had the opportunity to sit in on all of the rule making and all of the regulations that the agency was trying to interpret, and it was their own interpretation, and it helped very...it helped immensely that she were there while this was taking place. This is not always possible. And so I do think that this gives us an opportunity to at least respond to some intent that they don't always understand when those rules and regulations are made, what the intent of the legislation might be. And I will just say that I've had pleasant experiences working with the agencies, but it's just usually through misunderstanding or through communication that these things do not always happen the way we want. But I do support the legislation because I think that it will bring us into what other states are also doing and give us some oversight. Thank you, and I give the rest of my time back to the Chair.

SENATOR BAKER: Thank you, Senator Stuhr. Seeing no further lights, Senator Fischer, you are recognized to close on your amendment.

SENATOR FISCHER: Thank you, Mr. President and members of the body. My intent here is not to give agencies an impossible task, and I know that was not the intent of Senator Bourne with this bill either. The intent of this bill is to give this body, give the lawmaking body, which is the Legislature, more oversight on rules and regulations that the agencies are required to form from the laws that we pass. I think this is an important bill. I hope you will support the amendment and also support the bill. Thank you very much, and I'll return the rest of my time to the Chair.

SENATOR CUDABACK PRESIDING

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SENATOR CUDABACK: Thank you, Senator Fischer. You've heard the closing on AM0984 to the Government, Military and Veterans Affairs Committee. All in favor of that amendment vote aye; all those opposed vote nay. Voting on adoption of the Fischer amendment, AM0984. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator Fischer's amendment.

SENATOR CUDABACK: The Fischer amendment has been adopted.

CLERK: I have nothing further to the committee amendments, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Discussion of AM0573? Senator Schimek, there are no lights on. You're recognized to close, as Chairperson of the committee.

SENATOR SCHIMEK: Thank you, Mr. President and members. I urge strongly your adoption of the committee amendment, which does become the bill. And Senator Bourne mentioned that he had come to the Government Committee a number of times in the past. I think what he came with this year is a very sensible, easy process that will make a lot of difference. And I appreciated Senator Stuhr's remarks about the agencies don't always know exactly what our intent is, and working with the agencies can be very helpful. But I think this is a good bill. I don't think it's onerous. Once upon a time we had a process that was far more formalized than this and was, really, a lot of work for everybody if you really followed the process. So I think this is good. This will give us some kind of oversight and I think, as Senator Flood said, the oversight is going to be very necessary as we head down the road into the term limited territory. So with that, I urge the adoption of the committee amendment.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the closing on the committee amendments. The question before the body is, shall the committee amendments be adopted to LB 373?

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All in favor vote aye; opposed, nay. Have you all voted who care to?

CLERK: Senator Baker, do you want to vote on this while we...do you? I don't have you...that's why I'm asking. You want to vote? Okay. Thank you.

SENATOR CUDABACK: Record please, Mr. Clerk.

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator...or on the committee amendments. Excuse me.

SENATOR CUDABACK: The committee amendments are adopted. Anything further on the bill, Mr. Clerk?

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CUDABACK: Back to discussion of advancement of LB 373. Anybody wishing to discuss the advancement? Seeing no lights on, Senator Bourne, Chair recognizes you to close on the advancement. Senator Bourne waives closing. The question before the body is, shall LB 373 advance to E & R Initial? All in favor vote aye; opposed vote nay. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB 373.

SENATOR CUDABACK: LB 373 advances. We now go to our next agenda item, LB 116, Mr. Clerk, please.

CLERK: LB 116, a bill by Senator Friend. (Read title.) Bill was introduced on January 6, referred to the Judiciary Committee. The bill was advanced to General File. I do have Judiciary Committee amendments, Mr. President. (AM1130, Legislative Journal page 1191.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Friend, to open on LB 116.

SENATOR FRIEND: Thank you, Mr. President. Members of the

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Legislature, LB 116 advanced from the Judiciary Committee, unanimous vote, I believe one absent. LB 116 allows the court to sanction an employer or other payor for failing to withhold and remit the income of a person obligated to comply with a court order. The language, if you look in your...on your gadgets, as you can see, is fairly permissive in nature. Although most employers respect garnishment orders for child support, there have been instances where some employers who, for whatever reason, don't satisfy those court orders. I guess the bad apples, if you will, are the reason that I offer LB 116. We heard in the Judiciary Committee hearing on the bill that our state presently has some custodial parents who are struggling financially to make ends meet because child support payments are not being withheld and remitted by the employer of the noncustodial parent. These employers are disrespecting both our courts and the children for whom they have issued a garnishment order. Now, some states, Minnesota...I wouldn't say that this potential legislation mirrors Minnesota but it's fairly close. Some states in the Midwest--Iowa, North Dakota, Missouri--hold employers personally, I guess, liable for the amount of unpaid support due in addition to possible fines or court costs. LB 116 does not do that. The bill merely seeks to impose a \$25 per day penalty for up to \$500 per incident on an employer who fails to comply with a garnishment order. It addresses avoiding the statutes and perhaps might be the financial incentive needed to gain compliance from the aforementioned employers. The Minnesota law, I believe, and this one, like I said, it doesn't mirror it, but it's fairly close. Minnesota Statute 393-07, adopted in 2003, the pertinent language: may sanction an employer or payor of funds \$25 per day, up to \$500 per incident. The committee amendment that will follow, Senator Bourne will follow up with that, incorporates a few other Judiciary Committee items, issues I guess we'd call them, some bills, and I would appreciate the support on those as well. I'd appreciate the support we've received so far on LB 116. Treasurer's Office, Ron Ross, was helpful in moving this through committee, and also just from constituents and interested parties. With that, I would say...I would thank you for the consideration of this matter. I would ask for the advancement of LB 116 when the time comes. Thank you.

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LB 62, 116, 322, 444

SENATOR CUDABACK: Thank you, Senator Friend. You've heard the opening. As stated by the Clerk, there are committee amendments. Chairman Bourne, you're recognized to open on the Judiciary Committee amendments.

SENATOR BOURNE: Thank you, Mr. President. Members, the committee amendment to LB 116, as the Judiciary Committee does from time to time, includes the following legislative bills, as advanced by the committee: LB 444, LB 322, and LB 62. These...all of these bills were advanced to the floor without opposition. LB 116, as not amended by the committee amendment, the bill as introduced, authorizes a court to sanction an employer for failing to remit child support payments after receiving notice of its obligation to do so. LB 444, introduced by Senator Jensen, allows the state disbursement unit for child support to collect a fee equal to the cost of processing bad checks or returned debit transactions for child support, and requires notice of such invalid payments to be sent to HHS so that the payment is not incorrectly credited to the account. The bill would allow the SDU to require another form of payment from individuals who bounce a check or have a return debit transaction for child support for which the SDU incurs charges. Current law allows the SDU to require payment in cash or similar guaranteed method of payment only if the payor had made two return payments within one calendar year. That was the green copy of LB 444. The committee elected to change that, and the changes reflected in the committee amendment are that the committee amendment strikes Section 1 of the bill, which required changes to the CHARTS computer system, and eliminates the \$936,000 fiscal note. The amendment also reinstates current law pertaining to insufficient payments, which allows HHS to require another form of payment after receiving two insufficient fund checks within one year. So it goes back to what our current statute is, two insufficient checks within one year, rather than one. Lastly, the committee amendment clarifies the term "insufficient funds" to mean payments resulting in returned check charges or charges for electronic payments not accepted, and inserts "money order, cashier's check, or certified check" in place of "cash, guaranteed funds, or wire funds transfer," in Section 43-3342.03. The committee amendment also includes a bill, LB 322 introduced by Senator Schimek, which modifies

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existing statutes relating to how evidence of domestic violence affects child custody. Earlier, we had a bill, I think it was LB 116, that included some provisions of domestic violence. As I mentioned to you, when that came up the committee decided to scale back some of the green copy provisions and put forward what they thought would pass on the floor of the Legislature. This did meet with some opposition from the various advocacy groups, and we are going to...as I understand it, there's going to be an effort to divide the committee amendments. I'll further discuss LB 322 upon that division, but I will be asking the body to vote those amendments down. Lastly, also included in the committee amendment is LB 62, as introduced by Senator Beutler. LB 62 provides that chiropractors may assert a medical lien against a patient who has recovered damages from a third party as other medical professionals are currently permitted to do. In closing, I'd like to thank Senator Friend for permitting his priority bill to be used as a vehicle for other legislation which the committee felt was important enough to advance to the body for its consideration.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on the committee amendments. There has been a request by Senator Connealy, division of the question. Senator Connealy, would you and Senator Bourne please come forward? The Chair does rule that the committee amendments are divisible. Mr. Clerk, please inform the body how this will be done.

CLERK: Mr. President, because of proper prior planning by Judiciary Committee--thank you, Senator Bourne, for your help, and your staff--the first...there will be three divisions, as per your order, Mr. President. The first will be FA312, which will consist of Sections 9, 11, and 14 through 17. The second division will be FA311, which will consist of Sections 1 through 8, 10, and 13. And the third and final component, Mr. President, will be FA314, which will consist of Section 12 of the original amendment. So, Mr. President, the matter before the Legislature now is FA312, which is Sections 9, 11, and 14 through 17. (Legislative Journal pages 1837-1838.)

SENATOR CUDABACK: Thank you, Mr. Clerk, for that. Senator Bourne, I know you have opened on the whole committee...but if

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you would just at least summarize the first, FA312.

SENATOR BOURNE: Thank you, Mr. President. The committee amendment contains LB 116 as introduced, so it was not amended by the committee amendment. The bill, as introduced, authorizes a court to sanction an employer for failing to remit child support payments after receiving notice of its obligation to do so. That's what LB 116 is. Also in this division is a form of LB 444, as introduced by Senator Jensen. The amendment reinstates current law pertaining to insufficient payments. It allows HHS to require another form of payment after receiving two insufficient checks within one year, and the committee amendment makes some clarifying language, as requested by the Treasurer, relating to insufficient funds and payments resulting in returned check charges or charges for electronic payments not accepted as requested, again, by the Treasurer of the state of Nebraska. With that, that's the first division. I would urge your adoption of this division. Thank you.

SENATOR CUDABACK: Thank you, Chairman Bourne. You've heard the opening on the first division of the divided committee amendments, FA312. Open for discussion. Any senator wishing to discuss the first division of the divided committee amendments? Senator Bourne, there are no lights on. Senator Bourne waives closing. The question before the body is adoption of the first component, FA312, divided committee amendments to LB 116. All in favor vote aye; opposed vote nay. Voting on the first component of divided committee amendments. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of the first component of the committee amendments.

SENATOR CUDABACK: FA312 has been adopted. Mr. Clerk, next component.

CLERK: Mr. President, the second component, FA311, will consist of Sections 1 through 8, 10, and 13. (Legislative Journal page 1838.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Bourne.

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SENATOR BOURNE: Thank you, Mr. President. Members, this second division is the division I'm going to ask the body to either not vote on or to vote red on, and it constitutes the sections of the bill which make up LB 322. I will tell you what we did, and I am largely to blame for this, as Chair of the committee. We took a green copy of the bill, made some changes based on testimony that we had in the committee, and I think I dropped the ball in that I didn't consult enough with the various advocacy groups or I would like to say that maybe the advocacy groups didn't achieve consensus. Nonetheless, I feel that in an area such as this, child custody, domestic violence, things like that, I think that in order to move forward we should have consensus, and I failed to obtain that. So what we are going to do is look at this issue extensively over the summer, work with the various advocacy groups, and come up with a bill that hopefully will meet with everyone involved's consent and approval; that is, the judiciary, the judges, the advocacy groups, and whoever else wants to come to the table. So with that, I apologize for the confusion, but I would ask that you either not vote or vote red on this component of the Judiciary Committee amendment.

SENATOR CUDABACK: Thank you, Senator Bourne. Mr. Clerk, please.

CLERK: Mr. President, Senator Beutler had an amendment that I think would have been applicable to this component, but I understand he wishes to withdraw at this time.

SENATOR CUDABACK: Senator Beutler? It is withdrawn. Anything further else to this component, Mr. Clerk? If not, we'll go to discussion. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I'm disappointed that we need to do this, but I believe Senator Bourne is right, we do need to give this some further study. Senator Bourne, I am happy to be involved in that this summer, if that would be acceptable or necessary. I think that probably there wasn't a total consensus among all the groups that there should have been, and even though I'm disappointed because I

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think the bill did do some very good things, I'm very willing to follow your lead on this and ask the body to do likewise. Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. Further discussion, FA311? Seeing no lights on, Senator Bourne, did you wish to close?

SENATOR BOURNE: I do, Mr. President, members. Thank you, Senator Schimek, for your words. I commit to you that we will use our time this summer to come up with legislation that carries out the intent of the various advocacy groups, and we will definitely work with you and your staff to make that happen. I think it is a learning process. And while I do believe that the elements contained in the committee amendment do help, the advocacy groups either feel it doesn't go far enough or actually hurts them in some ways, and I would rather not go forward than go forward in a way that we are unsure of. So with that, I would urge you to either vote red or not vote on this component. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing on FA311. Question before the body is, shall that second component of divided committee amendments be adopted? All in favor vote aye; those opposed vote nay. Voting on adoption of the committee amendment second component, FA311. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 1 aye, 27 nays, Mr. President, on that component of the committee amendments.

SENATOR CUDABACK: Component has not been adopted. Mr. Clerk, next component, please?

CLERK: Third and final component, Mr. President, consists of Section 12 of the original committee amendment. (FA314, Legislative Journal pages 1838-1839.)

SENATOR CUDABACK: Senator Bourne, to open on FA314, the third component.

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SENATOR BOURNE: Thank you, Mr. President, members. This portion of the committee amendment is LB 62, as introduced by Senator Beutler. The...what is reflected in the committee amendment is unchanged from what Senator Beutler introduced. Initially...or, actually, the way the law reads now is that physicians, nurses, and hospitals are entitled to assert a lien for the costs of medical service provided to a patient who recovers from or settles with a third party wrongdoer. For a number of years, chiropractors were able to assert a lien based on that language--physicians, nurses, hospitals. Some time ago, I think it's been several years ago, there was a court decision here in our state that basically said because chiropractors are not specifically enumerated in statute, they do not have the luxury, for lack of a better word, of asserting a lien for their services. This bill has been introduced several times. I know Senator Hilgert has introduced it. I think Senator Jensen has introduced it. It's been introduced a number of times, and this year Senator Beutler introduced the bill. With that, that is what it does. I would yield my time to Senator Beutler, given that it was his bill, if he would like it.

SENATOR CUDABACK: Senator Beutler, if you care to use 8 minutes and 40 seconds.

SENATOR BEUTLER: Senator Bourne, thank you very much. As Senator Bourne correctly indicated, it was a right that chiropractors had at a particular point in time, or they thought they had until an adverse court decision came down. I want to back up a little bit, though, and be sure you understand what a lien is, because I know it's a confusing concept if you're not used to the idea. But basically, if you want to get a judgment against somebody for money for some wrong that they've done you, for something they owe you on a contract, you have to hire a lawyer, you have to go into court. It may be dragged out for months and months. A person may hide their assets or give away their assets or do something with their assets. And after you're done with this whole long process, you may end up with nothing at all, because you have a judgment but there may not be any assets there. They may have spent them. They may have gone bankrupt. A number of things could have happened. And so, over time in the law, this idea developed that we would have this

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lien and the lien would attach to specific property as, for example, builders and subcontractors and bankers have liens on real estate generally when they loan money on it or when they do work on the real estate, and you cannot sell or get rid of that real estate without getting rid of the lien. So it traps the asset so that for the work you've done you know you're going to get paid, and that's the whole theory of the lien, that people who do the work ought not to be cheated out of their fair and reasonable...the fair and reasonable benefit of their service by having someone for whom they did the good work get rid of the property in one way or another. In this particular case, the lien is on a pot of money that represents a legal judgment. If somebody is injured and a doctor or a nurse or a hospital helps them in some way and expends, does services, then at the time when a settlement comes in to this injured party they have a right to a lien on those proceeds so that they're not spent or otherwise wasted. And, of course, before them, attorneys have a lien on those proceeds. So the attorneys come first, that's in the statutes; and then these three categories of people--doctors, nurses, and...doctors, nurses, hospitals--have a right under the statute. And what this bill would do would be to simply add back chiropractors to this statute. Now, their lien, it's not an unusual procedure. If you look in the index to the statutes, veterinarians have liens, watch repairers have liens, silversmiths have liens, equipment repair people have liens, dry cleaners have liens, horseshoers have liens, and there are many other types of liens that exist, and they exist, again, because we believe that people who do the work ought not to get cheated out of the...of being paid for that work. So that's the basic idea. There are some people who don't like the particular lien statute that we're talking about, and there is another bill in Judiciary relating to that particular lien statute. They want to change some things around, but the Judiciary Committee can't reach agreement on that. But that's a separate question from the question of who should have the lien. Chiropractors have a lot of schooling, certainly as much as nurses. They're trained, professional people. They have gained more and more credibility. Doctors, nurses, hospitals did not come in and object to them having a lien. I think that they have every right to assert that they, too, should have a lien for what they do, and that's the simple proposition of this

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particular part of the committee amendments, and I would urge you to take it on its face values and don't let it get mixed up with other issues that trial lawyers or others may have an interest in. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Bourne, did you wish to use the remainder of the time? On with discussion of the third component, FA314, Senator Beutler. Senator Beutler waives his time. Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. President, members of the body. I have a concern about this because it's an expansion of what I believe is a poor law that we enacted a few years ago that has some unintended consequences. And before we expand that so more people can take advantage of these victims, I'd like to explain to you what we did and what the unintended consequences are. Because Senator Beutler is right. He explained a lien very well. The difference in what's happening with a medical lien is that these providers are not coming in after the person who has been injured is able to use their own insurance to cover their costs. They're coming in ahead of that in order to make a fast buck off someone who has been injured, in these cases tremendous physical injuries, that this money could be used to take care of the needs of them and their families as they get this award. And here's what happens. Think about when you get your health insurance statement and there's a piece that says, actual cost, and there's a piece that says, negotiated amount, and then it says, your responsibility. What some providers have done since we passed this medical lien law is say, I don't want to deal with your insurance company; I don't want that, instead of the \$100 actual cost, \$80 negotiated price; I want the 100 bucks; I don't want that 80 bucks. So what they do is they come in under this medical lien and they file and they get the 100 bucks. Now I'm the person who was injured and I've been paying my percent of my insurance my whole life. I work for a company. I work for state government. Maybe I'm self-insured. I paid my premium. But they go after the award. They cut to the head of the line with this medical lien in order to get the 100 bucks instead of the 80 bucks that your insurance company would pay, that's been negotiated, that you've paid for your whole life. Now Senator Beutler is right,

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there have been bills on this, and I guess I feel kind of passionate about it and, Senator Beutler, it doesn't have anything to do with the trial attorneys, although they approached me on it. When I heard about this problem and I met with some of these victims that this happened to, I was appalled. This is an unintended consequence of a law that was passed just a few years ago--medical liens are relatively new--and I don't think we should be expanding on...and this has nothing to do with the chiropractors, it doesn't have to do with lack of respect for their occupation. I don't think we should be expanding this ability for any medical provider to come in and do what has been happening in practice around the state. Now, there are good people who haven't done this, who do work with your insurance company and don't try to take from your settlement. But because this law is on the books, it does happen and it has happened to Nebraskans around the state. So I don't think we should be expanding what I called, and I...just to one of my fellow senators, sort of a stinky law, something that happened that shouldn't happen. Because what happens to these people absolutely stinks and it's terrible when it happens to them. They should be able to have their insurance pay for their hospital expenses. It shouldn't be 100 percent of that sticker price that nobody pays. Nobody is paying the sticker price. That's just a fantasy.

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: It's just a number that pulls out of the air. Nobody pays sticker price anymore for health coverage. So I just think philosophically I'm not in any way wanting to expand on something that isn't good policy in the first place, and so that's why I oppose this division of the question.

SENATOR CUDABACK: Thank you, Senator Thompson. On with discussion of the third component, Senator Chambers, followed by Senator Janssen.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I also am opposed to this division. When the bill was advanced...LB 62 was the bill. When it was advanced by the committee, I voted against it. Before the committee will put a

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bill in one of these packages, there has to be formal action taken by the committee, so anybody who is interested can read that committee report and see how the different members voted. I voted against LB 62. I was going to fight it tooth and nail if it ever came up on the agenda. When the package was being put together, it's nobody's fault other than mine. I was not present at the Exec Session where the bundling was done, but that does not put me in a position where I will not fight this. I hate to see Senator Friend's bill run into trouble, but I've never been opposed to this kind of a thing being done. Senator Beutler mentions that people have done certain kinds of work and they should be able to get their money through this medical lien. When he mentions a horseshoer, a silversmith, and these others, and subcontractors, that's entirely different. We're talking about medical personnel--currently, physicians, nurses, or hospitals. Chiropractor does not fit in that group at all. It's a situation where the chiropractors have been trying down through the years since I've been here to get raised to the status of a medical practitioner so that they are treated like doctors. Some refer to themselves as doctors, and they can do what they please. But I would not agree to put an optometrist in this situation, a podiatrist, an acupuncturist, or any of those others who happen to work on the body. I would not put a tattooist in this set of...in this situation, and I'm not going to agree to put the chiropractors here. So what they will do is put a foot on the brake and stop this bill. I am not, under any circumstances, going to agree to let chiropractors get in on this bad law that exists right now, and I won't have to repeat it because Senator Thompson gave such a clear statement of why the current law is bad, because of the fact that certain medical practitioners are misusing it, if you go by what the intent was. But since they're allowed to do that under the law, they were just tricky. They were able to circumvent the law. And this is going to seem slightly off the subject, but I have a reason for doing it. The textbook loan program is there because the state cannot give direct aid to these parochial and private schools, so what they found was a way to circumvent the law. Yet, if the students that they teach circumvented the teachings of the church, circumvented the teachings of the schools about being honest, they would want to drop the hammer on those students, but all the students would be doing is following the example of

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those who are teaching them on how to circumvent the law. When we come to what we're talking about here, I do not want chiropractors to be in a position to take advantage of a loophole in the law and make a bad situation even worse. An argument is a very poor one when it's based on a principle such as this: You've got three thieves there; I just want to put a fourth thief there. I'm not accepting that. I'm not going to go for it. Senator Friend may be so strongly...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...in favor of the chiropractors that he's willing to let this deck chair on his Titanic sink his Titanic. But I want him to know how strongly opposed to this I am, and if he looks at the committee report, he'll see that when LB 62 was voted on by the committee, I voted against it, and down through the years I have not been a fan of chiropractors and having them elevated to the status of a doctor. Senator Beutler was right, some people feel that way. I'm one of them. But aside from that, we should not extend the reach of a bad law, which has operated in a very unjust, Draconian fashion, and allow these various medical practitioners to take advantage of people who have been injured. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of FA314. Senator Janssen, followed by Senator Raikes. Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback. I didn't know whether you said Jensen or Jansaen, but apparently you said Janssen. I have the most utmost respect for the occupation of a chiropractor. Members of my family have used them for quite a few years and got some good relief. But I'm not too sure, I want to listen to the debate, whether we should allow chiropractors to get into settlements on health insurance and so on. But it seems to me that if you're in the hoospital, you know, resulting from an accident, that that chiropractor, I doubt very much whether they are allowed to work in a hospital. Now, I may be wrong. Maybe someone can shed a little more light on this. And so this would be after the fact, if someone was injured, spent, you know, several days in a hospital, and they

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were covered by the judgment that came down from the insurance companies. Now, would that...I'm not sure, but I don't believe that Medicare or Medicaid picks up the cost on chiropractors. If they do, I wish someone would correct me, but I don't believe that Medicare covers chiropractor treatment. Like I say, if I'm wrong, would someone please correct me on that. With that, I would give the rest of my time to Senator Johnson, if he would like to have it. Maybe he could elaborate a little bit more on hospital practices in...with chiropractors or any other physicians, if he would like to have the time.

SENATOR CUDABACK: Senator Johnson, would you like about two and a half minutes?

SENATOR JOHNSON: Well, I'm a long way from being an expert and, frankly, don't know very much about this. I guess one of the things that Senator Thompson brought up was this, is that if indeed there are members of the medical profession, be it physicians, hospitals, nurses, or whatever, that are abusing this law, maybe the problem that needs to be taken care of is to take care of the abuse so that these groups of people don't misuse the program either. So I certainly believe, whether the person is a chiropractor, physician, or whatever, that if they have an honest bill then it would be reasonable that it should be paid. That's not the question. But this is a little bit different situation and I guess I kind of wonder if we shouldn't look into it with the idea of seeing whether it should be used in all circumstances or not used in all circumstances. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson and Senator Janssen. Discussion of FA314? Senator Raikes, followed by Senator Beutler.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. Senator Beutler, you've heard the counter to your proposal. I'd like to hear your response.

SENATOR CUDABACK: Senator Beutler, would you respond?

SENATOR BEUTLER: Senator, there are several things that have

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been said, but I don't think the analogy of adding a fourth thief to three thieves is a very accurate or fair way to describe doctors, nurses, hospitals, or chiropractors. The point of the matter is they do the work. Now Senator Thompson has a bill in the Judiciary Committee, LB 194, that would say basically that with regard to this particular statute it would limit the patient against...limit the lien against the proceeds of the judgment or settlement obtained by the patient against a third party to the amounts not covered by insurance. Well, that's fine.

SENATOR RAIKES: But that wouldn't be part of this.

SENATOR BEUTLER: That's not a part of this, and why isn't it out of Judiciary Committee? Because, obviously, the Judiciary Committee doesn't consider it an open and shut case. Now, there are lots of complications to that particular lien statute and the way people use it and the way people may or may not abuse it, but it's not a matter of thieves. All of these people did the work. Chiropractors do the work. The court said, even when they wouldn't let the chiropractors be called physicians, they said that these people are obviously qualified to examine, x-ray, diagnose, and treat an injured claimant, and they're competent to testify as to the injury causation.

SENATOR RAIKES: Senator, if I could interrupt just a second. But is Senator Thompson's point that this provides a means to get from 70 percent of the reimbursement, or whatever the negotiated settlement was, up to 100 percent? Is that true or not?

SENATOR BEUTLER: I don't know if it's true because I'm not an expert on how the statute is applied. But the point is, Senator, that if you think it's a bad statute, repeal the statute, but don't keep people who are equally qualified with nurses, at least, and hospitals and doctors, don't keep them from having the same lien that you give the others. If you want to change the lien statute, fine, but it doesn't make sense to punish one group and have them have no access to the lien whatsoever because you don't like the way a complicated statute is formulated. I don't know all the ins and outs of it, and I

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would invite Senator Bourne and others on the Judiciary Committee to comment on LB 194, which is the bill being discussed. But the trial lawyers are here in the lobby. They get the first lien on all this and there's no reduction in their lien. And these chiropractors are every bit as deserving as many people who are benefiting from the lien right now, and they're every bit as deserving as other professional groups who are benefiting from liens. So you have to make a judgment.

SENATOR RAIKES: Let me see if I can rephrase it in a way. What you're saying is that the chiropractors are equally deserving in terms of having done work and deserving to be paid for it. The question is, if this is a law that has bad consequences, should we add yet another group to it which would make it probably politically harder to get fixed?

SENATOR BEUTLER: I think that's a fair statement of the question. But also another part of the statement of the question is, are you going to argue the lien itself on the merits? That is, LB 194 is not in front of you now.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Let's have that argument and let the poor chiropractors participate the way they should be allowed to participate with whatever it is that this Legislature has determined to be a valid form of the statute. And right now the valid form of the statute is what is in the statute, and the Judiciary Committee has refused to advance anything other than that to the floor of the Legislature.

SENATOR RAIKES: Okay. Thank you, Senator Beutler. And thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Raikes. Senator Beutler, you may continue.

SENATOR BEUTLER: Senator Bourne, if I may, and I'm asking questions I don't know the answer to,...

SENATOR CUDABACK: Senator...

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SENATOR BEUTLER: ...but could you talk about LB 194 and the committee's discussions on LB 194,...

SENATOR BOURNE: Right.

SENATOR BEUTLER: ...and why the committee has not advanced it to the floor?

SENATOR BOURNE: I can, and I'll...

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Senator Beutler, to be honest with you, we didn't have a lot of discussions after the hearing, because we had so many bills that were prioritized. We can of focused our attention on those. But I will tell you at the hearing there seemed to be a lot of confusion in this area. There was a court case that was handed down, and it was called the Dailey case, which some people are interpreting that means that the most a provider can collect from an individual who's injured is the amount that they, the provider, contracted with the insurance company for, and so it's unclear. And so I think during the hearing, at least my sense was, is before we pass out LB 194 we should see how this court case shakes out and how that is interpreted. And I don't know if that helps you, but I can tell you that...

SENATOR BEUTLER: Are you saying that the court case may well be saying that these providers cannot collect any more than what they contracted for, notwithstanding the lien statute?

SENATOR BOURNE: That is my interpretation of that court case. Now, I am...I will tell you that I don't believe some of the providers are interpreting it the same way.

SENATOR BEUTLER: Okay.

SENATOR BOURNE: And I'm not trying to be vague. I'm just simply saying that it's unclear and I think it's an area, due to the court case, that needs to shake out. But one thing I did

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find compelling is what you said in your closing, which was something to the fact or something to the extent of, listen, just because the underlying law might have some problems, don't penalize this provider, and I found your comments in that regard compelling and that's why I voted LB 62 out.

SENATOR BEUTLER: Senator, thank you. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Smith, followed by Senator Friend and five others.

SENATOR SMITH: Thank you, Mr. President and members. I rise in favor of FA314. I believe that there should be some parity between chiropractors and physicians, and whatever else people want to call themselves. I don't really get caught up in that. I believe that chiropractors provide a very necessary function and should be treated accordingly, and I believe that the access and services that they provide are helpful to the public and are important to rural Nebraska. I am sensitive to the issue that I believe Senator Thompson has raised in the billing practices of primarily hospitals. I think that there needs to be something done about that and I want to lend my effort in that direction and hope that we can resolve that. But I don't believe that defeating FA314 is the way to go about that. So I hope that we can adopt this amendment and allow there to be some parity in the field of medicine, and we can go about the business of allowing those providers to provide their services to Nebraskans. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Friend.

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Well, I think it's all pretty much been laid out here. Senator Chambers laid it out. Others have shown their concerns. Without, I guess, getting too dramatic--I've been known to do that on occasion--without getting too dramatic, I can tell you this, and I think Senator Chambers and most of you that know me, know me well enough that this is the truth. If I really, really, really loved LB 62, it's almost like one of my fingers on my hand. If I really loved that little pinky, I'd

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say, no, don't get rid of it. And Senator Chambers said, well, it's either you get rid of that little pinky or we're taking off all the rest of your fingers. Well, I think I'm the kind of guy, I'm probably stupid enough, to say, take all my fingers then, because I love my pinky so much. If I had eight hours in on this and I really loved LB 62, I'd cloture it right now. He knows me well enough to know that. I don't care if it went belly up. There's nothing in this bill that's that important to me that I don't wake up tonight and go, h'm, it didn't pass. Make no mistake about that, I'm telling you all right now, I don't want you here late, but I'll stay as late as we have to, if that would be my goal for that bill, if you all would allow me to stay that late. He knows it. Everybody here should know it that knows me well enough. Let's set that aside now. The chiropractors were involved in this lien situation, okay, for years and years and years. Nineteen twenty-seven, I believe, it's my understanding, the law went into place. Not until the Supreme Court, I believe, or an Appeals Court decided that physicians didn't include...a chiropractor, I should say, doesn't fall under that definition or isn't included in the physicians situation; that that was yanked away. What Senator Beutler's bill is doing is providing equity, something that they already had, a position that they already had in our current statutes, but now they don't have it. How is that equitable? The reason that this is being contested at this point in time is because the trial attorneys hate it. Senator Beutler laid it out nicely. They get a piece of the pie and they don't want to divide that up. Why would they? I understand that. And if that's the consensus out here, great. Let's go with it. But that's what it is, the trial attorneys saying, uh-uh, no, this ain't going. Let me reiterate. I'm not going to have much more to say about this piece. I'm going to leave it to the body, but you know how I feel about it. If this is to be part of that hand, then it's going to be. And, like I said, if I had eight hours in right now I would cloture it, cloture this bad boy, like I've said before. But you know what? Oddly enough, you guys are going to decide that. Senator Brashear, Senator Hudkins, Senator Stuhr, we're all sitting out here listening to trouble following a man. Well, trouble won't follow me that long. We're going to continue to discuss this off to the side. We're going to continue to decide whether that little pinky

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should be removed. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Friend. On with discussion. Senator Thompson, followed by Senator Chambers.

SENATOR THOMPSON: Thank you, Mr. President. Well, this is going to come as sort of a surprise to a lot of people in here. I'm not opposing this because of the trial attorneys. I just happen to agree with them. If you want to get into it...and I think we like to drop that "trial attorney" thing so that we stir up all the political things associated lately with a trial attorney, I guess, politically. The trial attorneys supported, big time, my opponent in the last election, so if I wanted to be a real stinker here I'd say, well, the heck with you people. (Laughter) Yes, well, anyway...I would say, the heck with this. I would just say, I'm sitting this one out because I'm going to get even. But I really, really, really think we should be thinking about the victims here, the people who got the settlement. They are the injured party, and that's who I'm standing up here for. Now, you can argue, well, it's sort of a stinky law and we didn't know the unintended consequences and we didn't know this kind of stuff was going to go on for the people who had insurance policies. We didn't know that when this passed. And I think it passed, I don't know, eight, ten years ago. This is one of those little unintended consequences, and it's a fuzzy area because of the lawsuit, because of all sorts of things. That's the reason the bill is in committee. Maybe it's because the trial attorneys are weak and all the other people who want to hang onto this are strong. I don't really care who's weak and who's strong in this. I'm worried about the victims, and I don't think we should be adding in another provider who can stick it to them, and that's what's happening. We should allow people who are victims, who get a settlement, to have those providers use their insurance. They paid into their insurance, and the people who insured them, their employers, have paid into their insurance, and it's only fair. They shouldn't be able to come in at that mythical number that gets cooked up that's called the cost, because it isn't really the cost. It's a negotiated price. So it isn't fair. It's a poor law that we didn't know what the consequences were going to be. Maybe the Judiciary Committee will have a little more time to

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work through some of these things. If it were as simple as saying, let's add a name to a list, it would be out of committee, just like Senator Beutler's bill. This is a complicated mess, largely because our whole health insurance repayment system is a complicated mess. Senator Byars' constituent was one of the people who testified. It was a young woman who had three small children. She got hit by another driver. She has tremors. She walks with a cane. She got a small settlement. She might have been able to do some things so her kids could...she could hire somebody to take her kids to places she couldn't take them anymore, to help her get out of bed and get some things done around the house. That was what her settlement was for. But a provider jumped to the head of the line, wouldn't take the insurance that she had paid for her whole life as an employee, on her percent, and went in and took the 100 percent, peeled it off her settlement. That's not right, and we shouldn't be perpetuating it, just saying, well, you know, if the other providers get it then the chiropractors should get it, too. I mean, sooner or later we got to say no. I'm more than happy to bring this as an amendment, if this gets adopted here, on Select File to get to the other issue, because I think it's really, really an important one.

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: And I, philosophically, don't think we should be expanding on the number of people who can come in and do this to people. Now Senator Beutler said, well, the attorney gets to do that. Well, the attorney takes their percentage off at the beginning, and you can argue about how this works or how this doesn't work, what they put up in terms of expert testimony, what they do in terms of time, knowing they may or may not get a settlement or a...not a lawyer, what do you call that, whatever they get at the end. They may or may not get it. So...but that's a separate issue. This is called a medical lien and this is the thing that's gone awry, and I don't think we should be adding to that by putting another medical provider on the list. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Mr. Clerk, items for the record, please?

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CLERK: Mr. President, Enrollment and Review reports LB 13, LB 13A, LB 465, LB 484, LB 538, LB 538A, LB 761, LB 761A as correctly engrossed. And amendments to be printed: Senator Foley to...I'm sorry, Senator Friend to LB 98; Senator Beutler to LB 548; Senator Beutler to LB 548; and Senator Brashear to LB 645. And a new resolution, LR 241, a study resolution introduced by the Urban Affairs Committee. (Legislative Journal pages 1839-1846.)

Mr. President, Senator Chambers would move to amend the committee amendment. Senator, FA317. It's the one, Senator, that inserts the word "podiatrist." (Legislative Journal page 1846.)

SENATOR CHAMBERS: Thank you. Thank you. Mr. President, members of the Legislature, I'm prepared to stay here till midnight with Senator Friend. And what needs to be kept in mind, what we're talking about is not LB 62 on its own. It did not get on the agenda on its own, Senator Friend. It hitched a ride on LB 116. And I would have opposed LB 62 had it stood alone. Senator Friend, on occasion, will say, guess what, and not tell us what we should guess or the what. But I'm going to use what he sometimes introduces a statement with--guess what. Senator Friend and anybody else who knows me is aware that I don't take marching orders from anybody. I have been against what the chiropractors have been trying to do for years, but this that is being attempted here goes beyond the chiropractors. It goes to the principle that if you have a bad bill, a bad statute, that is no argument that you ought to make it worse. That's one of the least persuasive arguments I've ever heard Senator Beutler make. Senator Beutler is usually the one who says that we're interested in good legislation. If there happens to be a bad law on the books, we should not extend the reach of a bad law. But he has brought us a piece of legislation which has managed to hitch a ride on another bill. If Senator Friend is willing to let his fingers be cut off for somebody else, let him do it. After all, greater love hath no person than this, that he or she would lay down his or her life for his or her friends. The second is like unto that. Greater foolishness has no person than this, that he'll let his fingers

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be cut off for somebody else who doesn't think anything of him. Senator Friend is not being noble. Senator Friend is being foolish. Why, if he was a general on the battlefield, I would take every star off his shoulders, I'd take his steel pot off his head, I'd take the swagger stick out of his hand, I'd take those pearl-handled pistols off, and I would reduce him to the rank of a buck private and I would send him back to the company area with orders that he be put on kitchen police. They call it KP, but it really means just kitchen police. He's going to sacrifice an army for a foolish point. Into the valley of death rode the 600, knowing they're going to die because some foolish man said, you all ride in there and let them kill you. That's what being a good soldier means. You don't use your brains. You don't think. You go where somebody tells you to go. But I'm not going with you, because I got to stay alive to tell you to go there and send others just like you to your doom. Well, I'll stay here tonight and make sure that this bill doesn't go anywhere. So I'm going to offer some amendments, and I also have one prepared to strike...or to repeal Section 52-401 outright. That would get rid of this medical lien stuff that we're talking about. Don't amend it; repeal it outright. Senator Beutler said, if you have a problem with the statute, do something about the statute. I listened and I've learned. Senator Johnson, Dr. Johnson, said, don't just look at those who are doing the wrongfulness; if they are, find a way to correct it. I want to repeal the statute outright, and we'll get to that amendment. We're going to stay on this division of LB 116 for a good long time. LB 62 didn't make it out here and onto the agenda. That's what Senator Friend should keep in mind. But if he's willing to sink LB 116, I'm willing to help him do it. To the same extent, well, I'm going beyond him, that he is so entrenched that he's willing to lose his bill to let a bad portion, such as LB 62, take it down, I'm willing to take his bill down to keep a bad piece of legislation from joining a bad law and making it worse. He doesn't think I can last until 11:59. He thinks I'll get tired. Well, you all aren't going to get any free food, so I'm going to see how long everybody else wants to stay here with me. You don't see me munching, going past these desks and needing extra nourishment. You don't see me drinking water. Senator Friend, I don't need it. I'm like the camel. I just go on, and on, and on, and the further I go

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the more energy I seem to develop. When that little Energizer bunny runs out of energy, I walk right past him, haven't even slowed down. But let me tell you what my amendment that's pending would do. Since we're talking about everybody who does work being allowed to get a lien, what my little amendment would say is that in line...in lines 6, 9, 13, 18, 20, every place where "chiropractor" exists, we will insert a different practitioner. If I've called up the right one, the first one would be a podiatrist. Then I have another amendment and it would insert an optometrist. And after the optometrist, I will get to the acupuncturist. And I'm going to think of...oh, and then the tattooist. And I'm going to put...give the body a chance to put all these in, and you can vote. If you think that this is a wise practice of extending the reach of a bad law currently on the books even further, you'll have that opportunity, and I'll see just how far out you're willing to push this thing. And if you adopt every one of my amendments, I'm still going to be opposed to FA314, which is the one that we're on. That's the division, the chiropractor amendment. And I don't care who is lobbying for this portion. Senator Beutler wants to invoke the trial attorneys. Well, who is the lobbyist for this? Senator Beutler didn't hatch this out of his head. There's a lobbyist pushing for this. So if that's what you ought to base it on, don't go for the bill because a lobbyist is asking you all to do it. The trial attorneys can talk to me. The defense attorneys can talk to me. The ethanol purveyors can talk to me. Anybody can talk to me, but they're not going to dictate to me on what my position ought to be or how I ought to proceed. So I'm willing to stay here, and stay here, and stay here. And LB 116, if you add this amendment, if somehow there should be a hitch in my giddyup and you manage to get a vote and you add this to the bill, then I'm going to start making motions on the bill itself. I will move to recommit it to committee, I will move to bracket it, and I will move to reconsider every one of those votes. And if you add this provision to the bill, then, as I could have done earlier, I can offer the same amendments again, because then I will not be amending an amendment; I would be amending the bill. And I won't run out of ideas. Why, when you give me...I've been known to take a bill before us that had six or seven words and stretch that out to two or three dozen amendments. So when you're going to give me

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an amendment that has about 34 lines in it, or 32 maybe,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...and all those words comprising those lines, why, you know good and well that I can keep us here till 11:59. And the reason we can only go till 11:59, if we go a minute past midnight then we're into the next legislative day. Now, the Speaker may be willing to do that to see just how long we are willing to work and how dedicated we are, but if we adjourn after 12:01 a.m. tomorrow morning, that legislative day is over, it is history. But what you can do is recess on that day to a time after people have had a chance to go home, sleep, and I hope take a shower, brush their teeth, change their socks and other things which are unmentionable and which I will not mention, then come back here fresh and chipper after our recess and continue to work.

SENATOR CUDABACK: Senator Chambers, your time is up, but you may continue. Your light is next.

SENATOR CHAMBERS: Thank you, Mr. President, and I'm turning it on again. The bad bill that became law is being abused. Nobody has said that all doctors, all physicians, all nurses, or all hospitals are brigands, thieves, or whatever. I used an analogy by saying if you've got three thieves, Senator Beutler is saying, in effect, let a fourth thief get in there. What Senator Thompson has pointed out, and just so I'll have something to say for the record, there is a cost that the practitioner will charge. Let's say \$1,000. She said \$100. Well, that means you just looked in the door and asked them, am I at the right address? That's \$100, to ask, and if they answer you it's \$200. So \$1,000 and, because you're covered by insurance, these practitioners will negotiate an amount that the insurance, the one who covers it, even if it's Medicare, is going to pay. So let's say they will agree to take \$750. Then you have to pay the remainder, \$250. So you have the \$1,000, which they get from everybody who doesn't have insurance. The \$750 is the amount they negotiated with the insurance carrier that they will charge for this service. The remainder, the \$250, is the responsibility of the patient. What these

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practitioners or healthcare providers are doing is saying they're not interested in getting that negotiated amount, the \$750. They are not going to deal with the insurance company. They're going to put a medical lien in place for the full \$1,000. That way they will get the full \$1,000 from the person rather than the \$750. So let's say the person gets a settlement of \$1,000. The practitioner, instead of getting the \$750 that had been negotiated for, gets the full \$1,000. Now, while Senator Beutler is bemoaning the plight of the practitioner...I meant the chiropractor, he's not bemoaning what happens to these patients, these injured people who are, because of a loophole, going to be held to give up \$1,000 instead of the \$750 that the hospital agreed to accept. The hospital agreed to accept this. But they say, because the Legislature was shortsighted and I see an unintended consequence that will benefit me under the law that they passed, I'm going to disregard dealing with the insurer; I don't want to be paid by the insurer; I want the full \$1,000, so I'll put a medical lien. Then, if the person gets a judgment, out of that judgment the hospital takes \$1,000 and forgets or reneges on the negotiated \$750. How noble is that? So Senator Beutler says, tsk, tsk, tsk, that should not be; however, since it is,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...there's a lobbyist who wants his clients to be able to get in on the gravy train too; he wants to be able to pile on this injured person. So whereas you've got a bad law, he's justified in making it worse. And since you all may be of a mind to make it worse, I want to make that worse even worse, and that's what my amendment would attempt to do. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Engel, followed by Senator Brown and six others, on FA317.

SENATOR ENGEL: Call the question.

SENATOR CUDABACK: The question has been called. Senator Engel, what was your request? Senator Engel.

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SENATOR ENGEL: Call the question.

SENATOR CUDABACK: You had called the question. Senator Engel, there's only been one person speaking. That's Senator Chambers. So I'd have to...your request is out of order. I'm sorry.

SENATOR ENGEL: Well, don't we ask for five hands?

SENATOR CUDABACK: Your request is out of order, Senator Chambers (sic). I rule it has not had a fair debate. I'm sorry, unless you want to overrule.

SENATOR ENGEL: My name is Engel. Yeah.

SENATOR CUDABACK: Continued debate? Senator Brown.

SENATOR BROWN: Thank you, Mr. President, members. It was my understanding that the whole underlying idea of the medical liens was to make sure that there was emergency care, and I'm not certain that I believe that rightly...I mean, and I'm not saying anything negative about chiropractors, but I'm not sure that that care can be considered emergency care. But I would yield the rest of my time to Senator Beutler. Thank you.

SENATOR CUDABACK: Senator Brown, thank you. Senator Wehrbein, followed by Senator Beutler. Senator Beutler, you may continue. You had time yielded to you by Senator Brown.

SENATOR BEUTLER: Thank you, Senator. And I'm making a point of using that because I...(laugh) I think the recent confusion indicates that we've probably gone on long enough tonight. Senator Lowen Kruse has one bill that I think we should get to. Let me say, though, in finishing up--and this bill will be back next year--that I think chiropractors are being done a great injustice tonight. I've been around for 20-some years. I've watched them increase their educational requirements. I've watched them do a whole number of things that have professionalized what they do. They have significantly higher credibility. People in every one of your districts use them, and I think they do a lot of good, and to treat them in this manner I don't think is appropriate. There is a legitimate

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question on the statute and how it should be used and how it should be worded. It's not nearly as simply as Senator Chambers and Senator Thompson would have you believe, but perhaps that will get addressed soon. In any event, I don't have any practical solution for the dilemma that Senator Chambers has created for us tonight in a procedural sense. Shame on you, Senator Chambers. So if Senator Chambers would be so grateful as to remove and withdraw his amendment to the amendment, I would recommend to you that you, at this point, vote down this portion of the committee amendments.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Chambers.

SENATOR CHAMBERS: Senator,...Mr. President, if Senator Beutler will admit that he brought us into this situation then I will agree to what he suggested. I'd like to ask Senator Beutler a question.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Yes, sir.

SENATOR CHAMBERS: You don't have to...(laugh) okay. Senator Beutler, isn't it true that your provision is what brought us to where we are? (Laughter)

SENATOR BEUTLER: Where are we, Senator?

SENATOR CHAMBERS: Right here.

SENATOR BEUTLER: We are here. The committee amendment, the committee brought you this.

SENATOR CHAMBERS: But it is your provision in the committee amendment which has resulted in the discussion that we're having now. Would you agree with that, at least?

SENATOR BEUTLER: Not if I can help it. Let me think about that a second.

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SENATOR CHAMBERS: Mr. President, for Senator Beutler to yield that much, I'm going to accede to what he requested and withdraw my pending amendments.

SENATOR CUDABACK: FA317 is withdrawn.

CLERK: Senator, may I? The second amendment as well? Okay. I have nothing further pending, Mr. President, to this component of the committee amendments.

SENATOR CUDABACK: There are a number of...there are a number of lights on. Senator Wehrbein, your light is on.

SENATOR WEHRBEIN: Mr. President, members, I guess I'd like to ask for a point of order, since it's my time. Where are we exactly? Can Senator Beutler withdraw an amendment that's part of a committee bigger package?

SENATOR CUDABACK: Senator, that was Senator Chambers' amendment.

SENATOR WEHRBEIN: No, but I'm talking about FA314.

SENATOR CUDABACK: FA314, once you divide the question you can't do it without unanimous consent, Senator Wehrbein.

SENATOR WEHRBEIN: And did we have that? We have to vote it.

SENATOR CUDABACK: Senator Wehrbein, as you know, you cannot withdraw a committee amendment. It has to be voted down.

SENATOR WEHRBEIN: So the proper form will be to vote it down or vote it up, as per the sponsor's request at this point.

SENATOR CUDABACK: If we get to that point. Currently, we're on a speaking order. There are still...

SENATOR WEHRBEIN: Right. Not so as...so as not to extend the debate, I had quite a bit to say but, I will proceed...let us proceed on. Thank you.

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SENATOR CUDABACK: Those wishing to speak, Senator Thompson and Senator Chambers. Senator Thompson. Senator Thompson waives closing...or waives speaking, rather. Senator Chambers. And his light just went off. Further discussion on FA314? Senator Bourne, you're recognized to close, if you care to.

SENATOR BOURNE: Thank you. I do wish to close. Senator Beutler, I appreciate your doing what you're asking the body to do. I...as frustrating as it may be, we recognize that there is one more bill left on the agenda. And had we continued on in this fashion, obviously, we wouldn't have gotten to that. So, Senator Beutler, I appreciate your congeniality and your willingness to work with the body and help Senator Kruse. With that, I probably just will not vote on this component of the Judiciary Committee amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the closing on FA314, third component of divided committee amendments. The question before the body is, shall that component be adopted? All in favor vote aye; those opposed, nay. Voting on adoption of the third component of the divided committee amendments. Have you all voted on the question who care to? Have you all voted? Record please, Mr. Clerk.

CLERK: 12 ayes, 11 nays on the third component of the committee amendments, Mr. President.

SENATOR CUDABACK: The third component has not been adopted.

CLERK: I have nothing further on the bill at this time, Mr. President.

SENATOR CUDABACK: Back to discussion, advancement of LB 116. Open for discussion. Seeing no lights on, Senator Friend, Chair recognizes you to close.

SENATOR FRIEND: Thank you, Mr. President. Members of the Legislature, thank you for your patience and, Senator Bourne, thank you, thank you and the staff for working on this issue. Mr. President, I'll go look for my lost digit. Thank you very much. (Laughter)

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SENATOR CUDABACK: I missed that last statement, but I'll take it that's your close. The question before the body is, shall LB 116 advance to E & R Initial? All in favor vote aye; opposed, nay. Have you all voted who care to on advancement of LB 116? Record please, Mr. Clerk.

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB 116.

SENATOR CUDABACK: LB 116 advances. The next agenda item and our last agenda item is LB 594. Mr. Clerk, please.

CLERK: Mr. President, LB 594 is a bill by Senator Kruse and others. (Read title.) Introduced on January 18, referred to the Judiciary Committee, advanced to General File. I do have committee amendments, Mr. President. (AM1132, Legislative Journal page 1285.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Kruse, to open on LB 594.

SENATOR KRUSE: Mr. President and members, thank you. Oh my, that was the number I've been waiting for you to read out all day. I've been looking all over for that. A little bit of a smile for the body. This is the third year for this as my priority bill and so I'm grateful for these last few minutes. If it eventually passes this week, for personal reasons I may have to leave the floor because I'm not sure I can handle that. The problems of the third year have nothing to do with the support for the bill. It's had strong support all the time from enforcement, from defense attorneys, from the public. I appreciate that support, and that's part of the personal reason that I just acknowledge in passing, that it's been 15 years for Ruth and me since our son was injured by an impaired driver; been a part of a number of bills. I think the best way to understand what's going on here is to remind you that four years ago we had an interim study on this thing to try to clear up the impaired driver problems. It was determined...and we had a tremendous turnout from that--police, prosecutors, defense attorneys and so on. It was determined at that time that the

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first offense is working better and that we should focus on the repeat offenders, so that's what this bill does, only repeat offenders. And we had two major problems as we looked at it. One was specific loopholes that they were slipping by, and a number of you have talked about it in your support of me in this whole long process; and the other is confused prosecutors. So we developed a twin pack from that. One was a recodification which basically the Transportation Committee at that time dealt with, took care of, to put the statutes in logical order so that a new prosecutor, a part-time prosecutor in a small-number county, would be able to figure it out. That we have done. That brings us...that gives the background for this particular bill. It's very simple and it's not going to draw any headlines. On the bill you will find on the page 2 that on the second conviction it doubles the jail time. Why is that? Because it may be the same judge. She has before her, let's say, the person who's been there many times before but is being charged with a second offense because of a variety of things, has been convicted of impaired driving. I don't use the term "drunk" because people don't understand what that means. She has this impaired driver who's been up before many times. We're increasing the max so that she can recognize that and increase the jail time. Number two, you will see, as we get through the bill, that it refers to a court-certified copy. This allows that, and that's to help enhancement. A number of you have been frustrated with the lack of enhancement, and sometimes that's a problem in the court, that they will not accept a court-certified copy, so we authorize that. Number three is a major item. It's in the current language that the judge orders somebody not to drive. Well, what does that mean? That means a suspended license. The person keeps the license in their pocket, and if they're stopped on the side of the road they pull the license out, and if the officer doesn't check through somehow or another, assumes that it's a valid license. It is not. So we...on four pages there you will see that we're removing all the language about ordering not to drive and replacing it with "impounded" and "suspended." Impounded license is put in there more for youth than anybody else. That doesn't show up on a permanent record and it doesn't affect insurance rates, but the court keeps the license rather than the person, and we find that that's going to make quite a difference

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in the enforcement of that. The third item is a new penalty that has been adopted by most of the states. It's a very strong suggestion, again. Looks pretty innocent. On the second or third offense, if the offender has a high BAC, .16 or above, then it will be an increased penalty. In the...in our drafting of it, we made that a felony. The committee amendment deals with this alone; changes that penalty. That's enough. There's a lot more thoughts floating in my head, but in view of the hour, and in view that we're tired, and in view that we waited a long time to get this taken care of, I will close at that point, Mr. President.

SENATOR CUDABACK: Thank you, Senator Kruse. We do have Judiciary Committee amendments, as stated by the Clerk. Chairman of the committee, Senator Bourne, you're recognized to open on AM1132.

SENATOR BOURNE: Thank you, Mr. President, members. The committee amendment to this bill changes the penalty for the offense of aggravated driving under the influence, created by the bill. The penalty classification is reduced from a Class IV felony in the green copy with a maximum sentence of five years in prison, to a Class I misdemeanor with a maximum one-year sentence, while the mandatory jail sentence is increased from 10 to 30 days. And again, I want to make clear this applies only when an individual tests at twice the legal limit, .16, and is on at least their second offense of driving under the influence within 12 years. So it reduces it from a felony to a misdemeanor, while it does increase the mandatory jail sentence from 10 to 30 days.

SENATOR CUDABACK: Thank you, Senator Bourne. You've heard the opening on the committee amendments. Open for discussion. Senator Kruse.

SENATOR KRUSE: Thank you, Mr. President and members. I support the committee amendment, but I want to make one comment about it, and that's just in relation to how we determine these penalties. It has been sheer madness going through this, as we have with these other bills, because we're not consistent on it. If you injure my body, we don't take that nearly as seriously as

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injuring my pocketbook. Our son was injured by an impaired driver. It was a misdemeanor. Please recognize that that's changed now, but he's permanently paralyzed. It has cost our family and him hundreds of thousands of dollars of personal money, uninsured money. Do you think I would have preferred to have had him give Doug a check, a fraudulent check, for \$500? Yes, I would, but if it's a check for \$500, it would have been a felony. For taking hundreds of thousands of dollars away from us, it was a misdemeanor. This is going to increase it. Again, I support it, but I would just take this moment to passionately say to us we need to examine the penalties that we put out and how they play against each other in all the various areas that we work on. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Kruse. Further discussion on the committee amendments? Senator Bourne, there are no further lights on. Senator Bourne waives closing. The question before the body is adoption of the committee amendments offered by the Judiciary Committee to LB 594. All in favor vote aye; opposed, nay. The question before the body is adoption of the committee amendments offered by the Judiciary Committee. Have you all voted on the question who care to? Please record, Mr. Clerk.

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: The committee amendments have been adopted. Anything further on the bill, Mr. Clerk?

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CUDABACK: Open for discussion, advancement, E & R Initial. Anybody wishing to address advancement? Seeing no lights on, Senator Kruse, the Chair recognizes you to close, if you care to.

SENATOR KRUSE: Thank you. I will very briefly. This is the final piece of the actions that we've been working on for all these years. Several of you have asked if there are pieces that didn't get in this, there are pieces out there floating yet.

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Not really. There are two pieces that are not dealt with. One is, we do have judges who refuse to accept a blood alcohol test as evidence, and we've not been able to figure out how to do that. If anybody here with an attorney type of mind can figure out how to do that, we'd like to know it. The other piece that we have not been able to deal with, and we've done a recheck of all the prosecutors and so on, is when you have dual impairment. If the person has a drug and alcohol, which is a very dangerous combination, we are not able to measure that and to compare those measurements. And, again, we don't know how to do that. But aside from that, this cleans up the deck of the things that you and others have fed into us over the last three years. I really appreciate your consistent support and I appreciate what a nice group we have to close tonight. Thank you.

SENATOR CUDABACK: Thank you, Senator Kruse. You've heard the closing on the advancement of LB 594. The question before the body is, shall LB 594 advance to E & R Initial? All in favor of the question vote aye; opposed, nay. Voting on advancement of LB 594. Have you all voted on the question who wish to? Please record, Mr. Clerk.

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB 594.

SENATOR CUDABACK: LB 594 advances. Mr. Clerk, do you have any items for the record, please?

CLERK: I do, Mr. President, thank you. Your Committee on Enrollment and Review reports LB 227, LB 256, LB 256A, LB 343, LB 557, LB 573, LB 693 as correctly engrossed. Amendments: Senator Foley to LR 98, Senator Friend to LB 116. Mr. President, I have two names adds: Senator Cornett to add her name to LB 194, Senator Howard to LB 288. (Legislative Journal pages 1847-1848.)

And, Mr. President, I have a priority motion. Speaker Brashear would move to adjourn until Wednesday morning, June 1, at 9:00 a.m.

SENATOR CUDABACK: Heard the motion by Senator Brashear to

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adjourn, June 1, 9:00 a.m. All in favor say aye. Opposed, nay.
Ayes have it. We are adjourned.

Proofed by: AEG